Cottoni Posthuma:

DIVERS

CHOICE PIECES

OF THAT

Renowned Antiquary

Sir *ROBERT COTTON*,

Knight and Baronet,

Preserved from the injury of Time, and Exposed to publick light, for the benefit of Posterity.

By *J. H.* Esq;

LONDON,

Printed for *Richard Lowndes* at the *White Lion* in *Duck* Lane, near *Smith-field*, and *Matthew Gilliflower* at the *Sun* in *Westminster*-Hall, 1672.

To his worthily Honoured Friend,
Sir *Robert Pye* Knight, at his Houſe in
Weſtminſter.

SIR,

THe *long intereſt of Friendſhip, and nearneſs of Neighbourhood, which gave you the opportunity of converſing often with that worthy* Baronet, *who was Author of theſe enſuing Diſcourſes, induced me to this Dedicatory Addreſs. Among the* Greeks *and* Romans (*who were the two Luminaries that firſt diffuſed the rayes of Knowledge and Civility through theſe North-weſt Clymes,*) *He was put in the rank of the beſt ſorts of* Patriots, *who preſerv'd from putrefaction and the ruſt of Time, the Memory and Works of* Vertuous Men, *by expoſing them to open light for the generall Good; Therefore I hope not to deſerve ill of my Country, that I have publiſhed*

to the World these choice notions of that learned Knight Sir Robert Cotton, *who for his exact recerchez into* Antiquity, *hath made himself famous to* Posterity.

Plutarch *in writing the* lives *of* Others, *made his* own *everlasting; So an* Antiquary *while he feels the pulse of* former *Ages, and makes them known to the* present, *renders Himself long-liv'd to the* future.

There was another inducement that mov'd me to this choice of Dedication, and it was the high respects I owe you upon sundry obligations, and consequently the desire I had that both the present, *and* after *times might bear witness, how much I* am, *and* was

Sir,

3. *Nonas April.* 1651.

Your humble, and truly devoted Servant.

James Howell.

To

To the Knowing Reader, touching these following Discourses, and their AUTHOR.

THE memory of some men is like the *Rose*, and other odoriferous flowers, which cast a sweeter and stronger smell after they are pluck'd; The memory of Others may be said to be like the *Poppie*, and such Vegetalls that make a gay and specious shew while they stand upon the stalk, but being cut and gather'd they have but an ill-favour'd scent; This worthy Knight may be compared to the first sort, aswell for the sweet odor (of a good name) he had while he stood, as also after he was cut down by the common stroke of Mortality; Now, to augment the *fragrancy* of his Vertues and Memory, these following Discourses, which I may term, not altogether improperly, a *Posie* of sundry differing *Flowers*, are expos'd to the World.

All who ever knew this well-weighed Knight, will confess, what a great Zelot he was to his Countrey,

Countrey, how in all Parliaments, where he served so often, his main endeavours were to assert the publick Liberty, and that *Prerogative* and *Priviledge* might run in their due Channels; He would often say, *That he Himself had the least share in Himself*, but his Countrey and his Friends had the greatest interest in him: He might be said to be in a perpetual pursuit after Vertue and Knowledge; He was indefatigable in the search and re-search of Antiquity, and that in a generous costly manner, as appears in his Archives and copious Library; Therefore he may well deserve to be ranked among those Worthies——*Quorum Imagines lambunt* Hederæ *sequaces*; For an Antiquary is not unfitly compar'd to the *Ivie*, who useth to cling unto ancient fabriques and Vegetals.

In

In theſe Diſcourſes you have

1. *A Relation of proceedings againſt Ambaſſadors who have miſcarried themſelves, and exceeded their Commiſſion.* p. 1.

2. *That the Kings of* England *have been pleaſed to conſult with their Peers in Parliament for marriage of their Children, and touching Peace and War,* &c. p. 13.

3. *That the Soveraigns Perſon is required in Parliament in all Conſultations and Concluſions.* p. 43.

4. *A Diſcourſe of the legality of Combats, Duells, or Camp-fight.* p. 61.

5. *Touching the queſtion of Precedency between* England *and* Spain. p. 75.

6. *Touching the Alliances and Amity which have interverr'd betwixt the Houſes of* Auſtria *and* England. p. 93.

7. *A Diſcourſe touching Popiſh Recuſants, Jeſuits and Seminaries.* p. 111.

8. *The Manner and Means how the Kings of* England *have ſupported and improv'd their States.* p. 163

9. *An Anſwer to certain Arguments urg'd by a Member of the Houſe of Commons, and raiſed from ſuppoſed Antiquity, to prove that* Eccleſiaſtical *Laws ought to be Enacted by* Temporal *men.* p. 205

10. *The Arguments produc'd by the Houſe of Commons concerning the Priviledge of every Free-born Subject.* p. 221

11. *A*

11. *A Speech delivered in the House of Commons Assembled at* Oxford *in the first year of the last King.* p.26

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16 The Danger wherein this Kingdom standeth & the Remedy

These Discourses, being judiciously read, will much tend to the enriching of the understanding, and improvement of the Common stock of Knowledge.

A

A RELATION OF THE PROCEEDINGS AGAINST *AMBASSADORS* Who have miſcarried themſelves, &c.

IN humble obedience to your Grace's Command, I am emboldened to preſent my poor advice to this the greateſt, and moſt important cauſe that ever happened in this State, the Quiet of the Kingdom, the Honour of the Prince, the ſafety of the *Spaniſh* Ambaſſadors Perſon expoſed hereby to the fury of the People, all herein involved: A conſideration not the leaſt for the reputation of the State, and Government, though he little deſerved it.

The information made to his ſacred Majeſty by him, That your *Grace* ſhould have plotted this Parliament; Wherein if his Majeſty did not accord to your deſigns, then by the Authority of this Parliament to confine his ſacred Perſon to ſome place of pleaſure, and transfer the Regal Power upon the *Prince*: This Information if it were made by a Subject, by the Laws of the Realm were high Treaſon, to breed a rupture between the Soveraignty and the Nobility, either by Reports or Writings, and by the Common Law is adjudged no leſs: The Author yet knowing that by the repreſenting the Perſon of a ſoverain *Prince* he is by the Law of Nations exempt from Regal tryal, all actions of one ſo qualified being made the Act of his Maſter, until he diſavow: And injuries of one abſolute *Prince* to another, is *Factum hoſtilitatis*, and not *Treaſon*. The immunity of whom *Civilians* collect as they do the reſt of their grounds from the practice of the *Roman* State, deducing their Arguments from theſe Examples. The *Fabii* Ambaſſadors from *Rome* were turned ſafe from the *Chades* with demand of juſtice againſt them onely, although they had been taken bearing Arms with the *Ethrurian* their Enemies: The Ambaſſadors of the *Tarquines*, *Morte affligendos Romani non judicârunt, & quanqnam viſi ſunt ut hoſtium*

Titus Livius 2. dec.

Livius.

loco

loco eſſent, jus tamen Gentium volvit. And where thoſe of *Syphax* had plotted the murder of *Maſiniſſa*, *Non aliud mihi factum quàm quod ſceleris ſui reprehenſi eſſent*, ſaith *Appian:* The Ambaſſadors of the Proteſtants at the Counſell of *Trent*, though divulging there the Doctrine of the Churches, contrary to a Decree there enacted, a crime equivalent to *Treaſon*, yet ſtood they protected from any puniſhment: So much doth public conveniency prevail againſt a particular miſchief; That the State of *Rome* though in caſe of the moſt capital crime, exempted the *Tribunes* of the people from queſtion, during the year of office: And the *Civilians* all conſent, that *Legis de Jure Gentium indictum eſt, & eorum corpora ſalva ſint, Propter neceſſitatem legationis, ac ne confundant jura comercii inter Principes*, The redreſs of ſuch injuries, by ſuch perſons, the example of Modern and beſt times will lead us to. *Vivia* the *Popes* Legate was reſtrained by *Henry* the Second, for exerciſing a power in his Realm, not admitted by the King, in diſquiet of the State, and forced to ſwear not to act any thing in *Præjudicium Regis vel Regni. Hen.* 3. did the like to one of the *Popes* Ambaſſadors, another flying the Realm ſecretly, fearing, *timens pelli ſui*, as the Record ſaith. *Edward* 1. ſo reſtraining another until he had, as his Progenitors had, informed the *Pope*

Acta Triden. Concil.

Auguſt. de legibus Antiq. Roman.

Benedict. in vita Hen. 2.

Record. in *Scaccar. Weſt. Clauſ. Edw.* 1.

of the fault of his Minister, and received satisfaction of the wrongs. In the year 1523. *Lewis de Prat*: Ambassador for *Charles* 5. was commanded to his house, for accusing falsly *Cardinal Wolsey* to have practised a breach between *Hen.* 8. and his Master, to make up the Amity with the *French* King; Sir *Michael Throgmorton* by *Charles* the 9. of *France*, was so served, for being too busie with the *Prince* of *Condy* in his faction. Doctor *Man* in the year 1567. was taken from his own house in *Madrill*, and put under a Guard to a straiter Lodging, for breeding a Scandal (as the *Conde Teri* said) in using by warrant of his Place, the Religion of his Country, although he alledged the like permitted to *Ghusman de Silva* their Ambassador, and to the *Turk* no less then in *Spain*. In the year 1568. *Don Ghuernon d' Espes* vvas ordered to keep his house in *London*, for sending scandalous Letters to the *Duke d' Alva* unsealed. The Bishop of *Rosse* in the year 1571. vvas first confined to his house, after to the Tower, then committed for a good space to the Bishop of *Ely* his care, for medling with more business then belonged to the place of his imployment: The like was done to Dr. *Alpin* and *Malvisett* the *French* Ambassadors successively, for being busie in more then their Masters affairs. In the time of *Philip* the second of *Spain*,

Lewis in the Paper Chart. 1523.

the

the *Venetian* Ambassador in *Madrill*, protecting an offendor that fled into his house, and denying the Heads or Justices to enter his house, where the Ambassador stood armed to withstand them, and one *Bodavario* a *Venetian*, whom they committed to Prison, for his unruly carriage, and they removed the Ambassador unto another house, until they had searched and found the Offendor: Then conducting back the Ambassador, set a guard upon his house, to stay the fury of the people enraged. The Ambassador complaining to the King, he remitted it to the Supreme Councel; they justified the proceeding, condemning *Bodavario* to lose his head, and other the Ambassadors servants to the Galleys, all which the King turned to banishment, sending the whole process to *Inego de Mendoza* his Ambassador at *Venice*, and declaring by a publick Ordinance unto that *State*, and all other *Princes*, that in case his Ambassadors should commit any offence, unworthily, and disagreeing to their professions, they should not then enjoy the privilege of those Officers, referring them to be judged by them where they then resided. *Barnardino de Mendoza*, for traducing falsly the Ministers of the State to further his seditious Plots, was restrained first, and after commanded away in the year 1586. The last of *Spanish* Instru-

ments that disquieted this State, a benefit vve found many years after by their absence, and feel the vvant of it now by their reduction.

Having thus shortly touched upon such precedent examples, as have fallen in the vvay, in my poor observation, I humbly crave pardon to offer up my simple opinion vvhat course may best be had of prosecution of this urgent cause. I conceive it not unfit, that vvith the best of speed, some of the chief Secretaries vvere sent to the Ambassador by vvay of advice, that they understanding a notice of this information amongst the common people, that they cannot but conceive a just fear of uncivil carriage towards his Lorpship or his followers, if any the least incitement should arise; and therefore for quiet of the State, and security of his person, they vvere bound in love to his Lordship to restrain as vvell himself as followers until a further course be taken by legal examination, vvhere this aspertion begun, the vvay they onely conceived secure to prevent the danger; this fear in likelyhood vvill be the best motive to induce the Ambassador to make discovery of his intelligence, when it shall be required: I conceive it then most fit, that the *Prince* and your *Grace* to morrow should complain of this in *Parliament*, and leaving it so to their advice

advice and juſtice, to depart the Houſe, the Lords at the inſtant to crave a conference of ſome ſmall number of the Commons, and ſo conclude of a Meſſage to be ſent to the Ambaſſador to require from him the charge and proofs; the Perſons to be ſent, the two Speakers of the two Houſes, vvith ſome convenient company of either, to have their Maces and enſigns of Office born brfore them to the Ambaſſadors Gate, and then forborn, to ſhew fair reſpect to the Ambaſſadors, then to tell them that a relation being made that day in open *Parliament* of the former information to the King by his Lordſhip, they vvere deputed from both Houſes, the great Councel of the Kingdom, to the vvhich, by the fundamental Law of the State, the chief care of the Kings ſafety and public quiet is committed, they vvere no leſs the high Court of Juſtice, or *Superſedeas* to all others, for the examining and correcting all attempts of ſo high a nature as this, if it carry truth; That they regarded the honour of the State, for the Catholicks immoderate uſing of late the Lenity of Soveraign *Grace* to the ſcandal and offence of too many, and this aſperſion now newly reflecting upon the *Prince* and others, meeting vvth the former diſtaſte (which all in publique conceive to make a plot to breed a rupture between the King and

State, by that party malicioufly layd) hath ſo inflamed and ſharpned the minds of moſt, that by the acceſs of people to Term and Parliament, the City more filled then uſual, and the time it ſelfe neer *May* day (a time by cuſtom apted more to licentious liberty then any other) cannot but breed a juſt jealouſie and fear of ſome diſorder likely to enſue of this information, if it be not aforehand taken up by a fair legal tryal in that High Court: Neither want there fearful examples in this kind in the Ambaſſadors of *Genoa* upon a far leſs ground in the time of *Parliament*, and his houſe demoliſhed by ſuch a ſeditious tumult: The *Parliament* therefore, as well to ſecure his Lordſhips perſon, followers and friends, from ſuch outrages, to preſerve the honour of the State, which needs muſt ſuffer blemiſh in ſuch misfortunes, they were ſent thither to require a fair diſcovery of the ground that led his Lordſhip ſo to inform the King, that they might ſo thereupon provide in Juſtice and Honor, and that the reverence they bear unto the dignity of his Maſter, may appear the more by the mannerly carriage of his Meſſage. The two that are never imployed but to the King alone, were at this time ſent, and that if by negligence of this fair acceptance, there ſhould happen out any ſuch diſaſter and danger,

the

the World and they muſt juſtly judge as his own fault: If upon the delivery of this Meſſage the Ambaſſador ſhall tell his charge, and diſcover his intelligence, then there will be a plaine ground for the *Parliament* to proceed in Examination and Judgment; But if (as I believe) he will refuſe it, then is he *Author Scandali* both by the Common and Civil Laws of this Realm, and the *Parliament* may adjudge it falſe and untrue, and declare by a public Act, the *Prince* and your *Grace* innocent, as was that of the Duke of *Glouceſter*, 2 *Rich.*2. and of *York* in *Henry* the ſixth his time, then may the *Parliament* joyntly become Petitioners to his Majeſty, firſt to confine his Ambaſſador to his houſe, reſtraining his departure, until his Majeſty be acquainted with his offence, and aſwell for ſecurity as for further practice to put a Guard upon the place, and to make a *Proclamation* that none of the Kings Subjects ſhall repair to his houſe without expreſs leave: And to ſend withal a Letter, with all ſpeed, of complaint againſt him to the King of *Spaine*, together with a Declaration under the Seals of all the Nobility and Speaker of the Commons in their names as was 44 *Hen.* 3. to the *Pope* againſt his Legat, and 28 *Edw.* 1. Requiring ſuch Juſtice to be done in this caſe, as by the Leagues of Amity, and Law of Nations

Nations is usual, which if the King of *Spain* refuse, or delay, then it it *Transactio Criminis* upon himself, and an absolution of all Amity and friendly intelligence, and amounts to no less then a War denounced. Thus have I by your leave, and command, delivered my poor opinion, and ever will be ready to do your *Grace* the best service, when you please to command it.

THAT

THAT THE KINGS OF ENGLAND

Have been pleased usually to consult with their Peers in the Great Councel, and Commons in Parliament, of Marriage, Peace, and War.

Written by Sir *Robert Cotton*, Knight and Baronet, *Anno* 1621.

LONDON;

Printed in the Year 1672.

THAT THE

KINGS

OF

That the Kings of *England* have been pleased usually to consult with their Peers in the Great COUNCIL, *&c.*

TO search so high as the *Norman* Conquest, it is necessary to lay down the form and Government of those times, wherein the state of affairs then lead in another form of publick Councels; for the people brought under by the Sword of *William*, and his followers to subjected vassallage, could not possess in such assemblies the right of their former liberties, division and power having mastered them, and none of their old Nobility being left either of credit or fortune, what he retained not in providence as the Demesnes of the Crown, or reserved not in piety for the maintenance of the Church, he parted to those Strangers that sailed along with him in the Bark of his adventure, leaving the Natives (for the most part) as appeareth by his survey in no better condition then Villenage; He moulded their Customs to the manner of his own Country, and forbore to grant the Laws of the Holy *Edward* so often called for. To

William the Conqueror. *Malmsbury.*

To supply his occasions of men, mony, or provisions, he Ordered that all those that enjoyed any fruit of his Conquest, should hold their lands proportionably by so many Knights fees of the Crown, and admitted them to infeoff their followers, with such part as they pleased of their own portions, which to ease their charge they did in his and his Sons time, by two infeoffments, the one *de novo*, the other *de veteri*; This course provided him the body of his War, the money and provision was by Hydage assessed on the common people, at the consent of their Lords, who held in all their Signiories such right of regality, that to their Vassals (as *Paris* saith) *quot Domini tot Tyranni*, and proved to the King so great a curb and restraint of power, that nothing fell into the care of Majesty after, more then to retrench the force of this Aristocracy that was like in time to strangle the Monarchy.

Ex lib. feod. in Scacc.

Hen. 1.
Ex lib. pub. in Scacc.

Chron. de Dunstable.
Mat. Paris
Benedictus Monachus in vita Hen. 2.

Though others foresaw the mischief betimes, yet none attempted the remedy, until King *John*, whose over hasty undertakings, brought in those broyls of the Barons Wars.

Gervas. Dorch.
Roger Wendover.
King John.

There needed not before this care to advise with the Commons in any publick assemblies, when every man in *England* by tenure held himself to his great Lords will, whose presence was

ever

ever required in thoſe Great Councels; and in whoſe aſſent his dependent Tenants conſent was ever included.

Before this Kings time then, we ſeek in vain for any Councel called, he firſt as may be gathered (though darkly by the Record) uſed their Counſels and aſſents in the ſixth year of his Raign. *Clauſ. 6 Joh. in 3. Dorſo.*

Here is the firſt ſummons in Records to the Peers or Barons, *Tractaturi de magnis, & arduis negotiis*, it was about a War of defence againſt the *French*; And that the Commons were admitted at this time, may be fitly gathered by this Ordinance, *viz. Proviſum eſt aſſenſu Archiepiſcoporum, Comitum, Baronum, & omnium fidelium noſtrorum Angliæ, quod novem militis per Angliam inveniend. decimarum, &c.* and this was directed to all the Sheriffs in *England*, the ancient uſe in publiſhing Laws: From this there is a breach until the 18 *Hen.* 3. where the next ſummons extant is in a Plea Roll of that year, but the Ordinances are loſt: From hence the Records afford us no light until the 49 of the ſame King, where then the forme of ſummons to Biſhops, Lords, Knights, and Burgeſſes, are much in manner though not in matter to thoſe of our times. *Petit. 18. Hen. 3d* *Clauſ. 49. Hen. 3. in 11. Dorſ.*

This Parliament was called to adviſe with the King *pro pace aſſecuranda & firmanda*, they are the words of the Writ, and

and where advice is required, consultation must needs be admitted.

Edw. 1. To this King succeeded *Edward* his Son, a wise, a just, and fortunate Prince, his Raign, and so long to the fourth of his Grandchild, we have no light of publick Councels in this kind, but what we borrow in the Rolls of Summons, wherein the form stood various according to the occasions, until it grew constant in the form it is now, about the entrance of *Rich.* 2. The Journal Rolls being spoiled, by the injury of times or private ends.

Ex Rot. Parl. in Archivis London.

Claus. 5. Edw. 1. in 12. This King in the fifth of his Raign called a Parliament, and therein advised with his Lords and Commons for suppressing of *Llewellen* Prince of *Wales*, and hearing that the French King intended to invade some pieces of his Inheritance in *France*, he summoned a Parliament, *Ad tractand. ordinand. & faciend. cum Pralatis Proceribus & aliis Incolis Regni quibuslibet hujusmodi periculis & excogitatis malis sit obviand.* Inserting in the Writ that it was *Lex justissima, provida circumspectione stabilita:* That *Quod omnes tangit ab omnibus approbetur.* In 34. *Super ordinatione & stabilimento Regis Scotia*, he made the like Convention.

Rot. Parl. anno 7 Edw. 1.

Claus. 7 Edw. 1. in 3. Dors. Claus. 34 Ed. 1. in dors.

Edw. 2. His Son the second *Edward*, *pro solennitate Sponsalium & Coronationis*, consulted with his people in his first year, in his sixth year, *super diversis negotiis statum*

statum regni & expeditionem Guerræ Scotiæ *specialiter tangentibus*, he assembled the State to advise, the like he did in the eighth. *Clauſ. 1 Edw. 2. in 19. in dorſ. Clauſ 6 Ed. 2. in 3. in dorſ. Clauſ. 8. in 3. in dorſ.*

The French King having invaded *Gascoin* in the thirteenth year the Parliament was called, *super arduis negotiis statum Gasconiæ tangentibus.* And in 16. to consult *ad refranand. Scotorum obstinentiam & militiam.* *Clauſ. 13 E. 2. in 13. in dorſ. Clauſ 16. E. 2. in 27. in dorſ.*

Before that *Edward* the 3. in his first year would resolve whether Peace or War with the *Scotish* King, he summoned the Peers and Commons, *super præmissis tractare & consilium impendere.* *Ddw. 3. Clauſ. 1 Ed. 3. in dorſ.*

The Chancellor in *Anno quinto* declareth from the King the cause of that Assembly, And that it was to consult and resolve, whether the King should proceed with *France* for recovery of his Signiories, by alliance of marriage, or by war? And whether to suppress the disobedience of the *Irish*, he should pass thither in Person or no? *Rot. Parl. 5 Edw. 3.*

The year following he re-assembleth his Lords and Commons, and requireth their advice, whether he should undertake the Holy Expedition with the *French* King that year, or no? The Bishops and Proctors of the Clergy would not be present, as forbidden by the Canons such Councels, the Peers and Commons consult, applauding the Religious and Princely forwardness of *Parl. 6 Ed. 3.*

their Soveraign to this holy enterprize, but humbly advise a forbearance this year for urgent occasions.

Rot. Parl. 6 Ed. 3. Sess. 2. in 6.

The same year, though at another Sessions, the King demanded the advice of his people, Whether he should pass into *France* to an enterview as was desired for the expediting the treaty of marriage: The Prelates by themselves, the Earls and Barons by themselves, and the Knights of the Shires by themselves, consulted apart, for so is the Record; and in the end resolved, That to prevent some dangers likely to arise from the North, it would please the King to forbear his journey, and to draw towards those parts where the perils were feared, his presence being the best prevention; which advice he followed.

Rot. Parl. 7 Ed. 3.

In the following *Parliament* at *York* the King sheweth how by their former advice he had drawn himself towards the North parts, and now again had assembled them to advise further for his proceedings, to which the Lords and Commons having consulted apart, pray further time to resolve, until a full assembly of the State, to which the King granting, adjourneth that Sessions. At the next meeting, they are charged upon their Allegiance and Faith, to give the King their best advice; the Peers and Commons consulting apart, deliver their opinions, and so the Parliament ended

Rot. Parl. 7 E. 3. Sess. 2. Parl. 7 E. 3. in 6.

In

In the 13. year the Grands and Commons are called to consult and advise how the Domestick quiet may be preserved, the Marches of *Scotland* defended, and the Sea secured from forrein Enemies; the Peers and Commons having apart consulted, the Commons after their desire not to be charged to counsel in things *Des quenx ils mont pas cognizance*, answer, That the Guardians of the Shires, assisted by the Knights, may effect the first, if pardons of Felony be not granted. *Rot. Parl.* 13 E. 3.

The care of the Marches they humbly leave to the King and his Counsel, and for the safeguard of the Seas, they wish that the Cinque Ports, & Marine towns, discharged for the most part from the main burthens of the In-land parts, may have that left to their charge and care, and that such as have lands neer the Coasts be commanded to reside on those possessions.

The Parliament is the same year reassembled *Avisamento Prelatorum, procerum, necnon communitatis*, to advise *de expeditione guerræ in partibus transmarinis*, at this, Ordinances are made for provision of Ships, arraying of men for the Marches, and defence of the Isle of *Jersey*, naming such in the Record, as they conceive fit for the imployment. *Rot. Parl.* 13 E. 3. *Sess.* 2.

The next year *De la Pool* accompteth in Parliament the expences of the wars, *Parl.* 14 E. 3.

a new aid is granted, and by ſeveral Committees in which divers are named that were no Peers of Parliament, the ſafeguard of the ſeas, and defence of the borders are conſulted of.

In the 15 year, *De aſſenſu Prælatorum Procerum & aliorum de conſilio*, the Kings paſſage into *France* is reſolved of. *Anno* 17. *Badleſmere*, inſtead of the Counce] declareth to the Peers and Commons, That whereas by their aſſents the King had undertaken the wars in *France*, and that by mediation of the Pope a truce was offered, which then their Soveraign forbore to entertain without their well allowance; the Lords conſult apart, and ſo the Commons returning by Sir *William Truſſel* an anſwer, their advice and deſire is to compoſe the Quarrel, approve the Truce, and the Popes mediation.

Rot. Parl. 18 *E.* 3. The Popes undertaking proving fruitleſs, and delays to the *French* advantage, who in the mean ſpace allied with *Scotland* and others, practized to root out the *Engliſh* Nation in *France*: This King again aſſembled the year following, in which the Peers and Commons after many days meditation, reſolve to end it either by Battel or Peace, and no more to truſt upon the mediation or meſſage of his Holineſs.

Rot. Parl. 21 *E.* 3. In the 21 year, the chief Juſtice *Thorpe* declaring to the Peers and Commons that

that the *French* Wars began by their advice first, the Truce after by their assents accepted, and now ended, the Kings pleasure was to have their Counsels in the prosecution, the Commons being commanded, *Que ils se deveroyent trait ensemble & se quils ensenteroient monstrer au Roy & aux gravitur de son consilio*, Who after four days consulting, humbly desire the King to be advised by his Lords and others, more experienced then themselves in such affairs.

To advise the King the best for his *French* imployments a Parliament was summoned *Anno* 25. Herein the King for a more quick dispatch willeth the Commons to elect 24. or 30. of their house to consult with the Lords, these to relate to their fellows, and the conclusion general by the Lords to the King. *Parl.25 E.3.*

In the 27 a Great Counsel is assembled, many of the lay Peers, few of the Clergy, and of the Shires and Burroughs but one a peece. *Parl.27 E.3.*

This was for the prosecution of the *French* wars, when honorable peace could not be gotten; but the year following a Truce offered, the King forbore to entertain, until he had the consent of the Peers and Commons, which they in Parliament accorded unto before the Popes Notary, by publick Instrument. *Parl.27 E.3.*

Parl.29 E.3. The dallying of the *French* King in concluſion of peace, and the falling off of the Duke of *Britany*, having wrought his end with *France* by reputation of the *Engliſh* ſuccour, is the year following declared in Parliament, and their advice and aid required for the Kings proceeding.

Parl.35 E. 3. In the 36. year he calleth a Parliament to conſult whether war or peace by *David* King of *Scots* then offered, ſhould be accepted?

Parl.40 E.3. King *John.* In the 40. the Pope demanding the tribute of King *John*, the Parliament aſſembled, where after conſultation apart, the Prelats, Lords, and Commons adviſe the denyal, although it be by the dint of Sword.

Parl.43 E.3. In 43. The King declares to the Peers and Commons, that the *French* againſt the Articles of the Truce, refuſed payment of the moneys, and delivery of the Towns, ſummoning *La Brett*, and others the Kings Subjects in *Gaſcony* to make at *Paris* their appeals, and had forraged his of *Bontion*, requiring, whether on their breach he might not again reſume the ſtile and arms of *France*.

The Lords and Commons had apart conſulted, they adviſed the King to both, which he approving, altered the inſcription and figure of his Seal.

Parl.45 E.3. Two years after it was declared to the Peers and Commons, that by their advice

vice he had again resumed the stile and quarrel of *France*, and therefore called their advice for the defence of the realm against the *French*, securing of the Seas, and pursuing of the Warre, of which they consult, and resolve to give the King an aid; the like of Councel and supply was the year succeeding. *Parl.* 46 *E.* 3.

In the 50 a Parliament to the purposes of the other two was summoned; and the year following the King in Parliament declaring how the *French* combined underhand against him with *Spain* and *Scotland*, required their advice, how Peace at home, the Territories abroad, Security of the Sea, and charge of the War might be maintained. I have the longer insisted in observing the carriage of these times, so good and glorious, after ages having not left the Journal entries of Parliament so full, which with a lighter hand I will pass through. *Par.* 50 *Ed.* 3.

Richard his Grand child succeeded to the Crown, and troubles, having nothing worthy his great fortunes, but his great birth; the first of his Raign he pursued the Steps of his wise Grandfather, advising with Peers and Commons how best to resist his Enemies, that had lately wronged many of his Subjects upon the Sea coasts. *Rich.* 2. *Par.* 1 *Rich.* 2. *in* 5 & 6.

In the second year he again consulted with his people, how to withstand the *Scots*, who then had com- *Parl.* 1 *Rich.* 2. *in* 7.

bined with the *French* to break the Truce.

*Parl.*3 *Rich.*2. *in* 4 & 5. In the third he called the advice of Parliament, how to maintain his regality, impaired by the Popes provision, how to resist *Spain*, *France* and *Scotland*, that had raised Wars against him, how to suppress his Rebells in *Guyen* and *Ireland*, and how to defend the Seas.

*Par.*4 *Rich.*2. *n* 2 & 3. The like in the fourth year following at *Winsor*; the year succeeding at a great

*Parl.*5 *Rich.*2. *in* 3. Councel, the King having proposed a voyage Royal into *France*, now called the Parliament to determine further of it, and it is worthy observation, for the most before any proposition of War or Peace were vented to the Commons, a debate thereof proceeded in the great Councel to stay it fitter to Popular advice.

*Parl.*5. *Sess.*2. The quarrel of *Spain* continuing, the Duke of *Lancaster* offered a voyage against them, so that the State would lend him money, after consultation they granted aid, but not to bind them to any continuance of Wars with *Spain*.

*Parl.*5 *Rich.*2. In the sixth the Parliament was called, to consult about defence of the borders, the Kings possessions beyond Sea, *Ireland* and *Gascoyne*. his subjects in *Portugall*, and safe keeping of the Seas; and whether the King should proceed by Treaty of Alliance, or the Duke of *Lancaster* by force; for the Conquest of *Portugall*, the

the Lords approve the Dukes intention for *Portugall*, and the Commons advise, that *Thomas* Bishop of *Norwich*, having the Popes *Croiceris* should invade *France*.

The same year the State was re-assembled to consult, whether the King should go in person to rescue *Gaunt*, or send his Army; the Commons after two dayes debate crave a conference with the Lords, the effect is not entered in the Roll, only they bid Sir *Thomas Puckering* their speaker protest, that Counsells for War did aptly belong to the King and his Lords; yet since the Commons were commanded to give their advice, they humbly wished a voyage Royal by the King; if not, that the Bishop of *Norwich* ought with the advantage of the Popes *Croiceris* be used in that service, who accepted the Charge with ill success; he further for the Commons prayed, that the Kings Unkle should not be spared out of the Realm, before some peace be setled with the *Scots*, and that the Lord *de la Sparre* sent with Propositions from *Spain*, may first be heard. *Parl. 6 Sess. 2.*

The Chancellor in the seventh year in the name of the King willeth the Lords apart, and so the Commons, to consult whether Peace or War with *Scotland*, or whether to resist or assail the Kings adventure with *Spain*, *France*, or *Flanders*. *Par. 7 Rich. 2.*

Their

Their opinion is not entered in the Rolls (an omiſſion uſual by the Clarks neglect) only their Petition is recorded, that the Biſhop of *Norwich* may accompt in Parliament the expence of the monies, and be puniſhed for his faults in the ſervice he undertook, both which are granted.

Parl.7 Seſſ.2. At the next Seſſions the ſame year the Commons are willed to adviſe upon view of Articles of Peace with the *French*, whether War, or ſuch a Unity ſhould be accepted; They modeſtly excuſed themſelves as too weak to conſult in ſuch weighty affairs; But being charged again as they did tender the honour, and right of the King, they make this anſwer, *Quils intendent que ancunes ſermons & terres que meſme lour Leege auroit eit pur ceſt accord in Guien ſi ſerront tenus dobt Roy Francois par homage & ſervice mars ne perſont uny que lour dit Leeige voiroit aſſenter trope legierement de temer dicens Francois pertiel ſervice la villa de Callis & aultres terres conquiſes des franceiſe per leſpreneve verroit la comen enſe faeſt fait ſi autrement lour perroit bien faire*, giving their opinions rather for Peace than War; Peace with *France* not ſucceeding the eighth year, the body of the *Par.8 Rich.2.* State was willed to adviſe, whether the King in his own perſon, or by ſending of forces againſt the *French*, *Spain*, *Flanders* and *Scotland*, ſhould proceed.

This

This King having assembled at *Oxon* his great Counsel to advise whether he should pass the Seas or no, with an Army Royal, and they not daring to assent without greater Counsel. *Claus.9 Ric.2.*

A Parliament the tenth year to have the advice of the Commons, as well as of the Lords was called, and how the Realm should be governed in their Soveraign his absence. *Par.10 Rich.2.*

The truce with *France* was now expired, the Parliament was called in the 13*th* to advise upon what conditions it should be renewed, or otherwise how the charge of the War should be sustained; at this assembly, and by consent of all, the Duke of *Lancaster* is created Duke of *Aquitaine*, the Statute of provisions now past, the Commons a party in the Letter to the Pope. *Parl.13 Ric.2.* *Rot.Claus.13. Ric.2.*

The year succeeding a Parliament is called, for the King would have advice with the Lords and Commons for the War with *Scotland*, and would not without their Counsels conclude a final peace with *France*. The like assembly for the same causes was the year ensuing, the Commons interesting the King to use a moderation in the Law of provisions, to please at this time their holy Father, so that the Statute upon their dislike may again be executed; and that to negotiate the peace with *France* the Duke of *Aquitaine* may rather than another be imployed. *Par.14 Ric.2.*

To

Parl.17 Ri.2. To conſult of the Treaty with *France* for Peace, the King in the ſeventeenth calleth a Parliament (the anſwer of the Lords is left unentred in the Roll) the Commons upon their faith and allegiance charged, adviſed that with good moderation homage may be made, for *Guien* an appenage of the French *Croine* ſo it trench not to involve the other pieces of the Engliſh Conqueſt, their anſwer is large, modeſt and worthy to be marked.

Henry 4. Now ſucceedeth a man, that firſt ſtudied a popular party, as needing all to ſupport his titles.

Parl.5.Hen.4. *Parl.6.Hen.4.* *Parl.7 & 8. Hen.4. in 19 & 20.* He in the fifth year calleth a Parliament to repreſs the malice of the Duke of *Orleance*, and to adviſe of the Wars in *Ireland* and *Scotland* (neither Counſels or ſupplies are entred in the Roll) and to reſiſt an invaſion intended by *France* and *Brittain*, he aſſembleth the State again, the like was the ſecond year following for *France*.

Claus.7 H.4. In this the Commons confer with, for guard of the Sea, and make many Ordinances, to which the King aſſenteth, the peace with the Merchants of *Bruce* and *Foins* is debated, and a Proclamation publiſhed, as they reſolved; by the Speaker the Commons complain of 96 pieces of importance loſt in *Guien* the year before, need of the defence of the borders, and Sea coaſts, to ſuppreſs the Rebellion in *Wales*,

In 33.

Wales; and disloyalty of the Earl of *Northumberland*; they humbly desire, that the Prince may be dispatched into those parts with speed, and that the Castle of *Manlion* the key of the three realms might be left to the care of the English, and not to *Charls* of *Navarre* a stranger, and to have a vigilant eye of the Scotish prisoners. *In 57.* *In 59.*

In the tenth the Parliament is commanded to give their advice about the Truce with *Scotland*, and preparation against the malice of the *French*.

His Son, the wise and happy undertaker, advised with the Parliament in the first year, how to cherish his Allies, and restrain his Enemies; for this there was a secret Committee of the Commons appointed to confer with the Lords, the matter being entred into a schedule touching *Ireland*, *Wales*, *Scotland*, *Callis*, *Guien*, Shipping, Guard of the Seas, and War, provision to repulse the Enemies. *Hen. 5.* *Parl. 1 Hen. 5.* *In 2.* *In 4.*

In the second he openeth to the Parliament his Title to *France*, a quarrel he would prosecute to death, if they allowed and ayded, death is in his Assembly enacted to all that break the Truce, or the Kings safe conduct. *Parl. 2 Hen. 5.*

The year following peace being offered by the *French* King, and the King of the *Romans* arrived to effect the work, the King refuseth any conclusion until *Parl. 3 Hen. 5.*

he

he had thereunto advice and assent of the Lords and Commons, for which occasion the Chancellor declareth that Assembly.

Parl.4 & 5. Hen.5. In the fourth and fifth, no Peace being concluded with *France*, he calleth the State together to consult about the Warr, concluding a Treaty of amity with *Sigismund* King of the *Romans* by allowance of the three Estates, and entred Articles into the Journal Rols.

Parl.5 Hen. 5. The same year, by the Duke of *Bedford* in the Kings absence a Parliament was called, to the former purposes, as appeareth by the Summons, though in *Parl.7 Hen. 5.* the Roll omitted. The like in the seventh.

The Treaty with *France* is by the Prelates, Nobles, and Commons of the Kingdom perused and ratified in the 11. of his Raign.

Hen.6. His Son more holy then happy succeeded, adviseth him the second year *Rot. Parl.2 Hen.6.* with the Lords and Commons, for the well keeping the Peace with *France*; consulteth with them about the delivery of the Scottish King, and the conclusion of it is confirmed by common assent.

Rot.Pa.3 H.6. And in the third year they are called to advise and consent to a new Article in the League with *Scotland*, for change of Hostages.

Rot.Pa.9 H.6. And in the ninth conclude certain persons

persons by name to Treat a Peace with the Dolphin of *France*.

The Treaty at *Arras*, whither the Pope had sent as Mediators two Cardinals, not succeeding.

The King in Parliament, *Anno* 14, sheweth he must either lose his Title, Stile, and Kingdom of *France*, or else defend it by force, the best means for the prevention thereof he willeth them to advise him. *Rot. Parl. 14 Hen. 6.*

He summoneth again the next year the State, to consult how the Realm might be best defended, and the Sea safe kept against his Enemies. *Rot. Parl. 15 Hen. 6.*

In the twentieth the Commons exhibite a Bill for the Guard of the Sea, ascertain the number of Ships, assess wages, and dispose prizes of any fortune, to which the King accordeth, and that the *Genoways* may be declared enemies for assisting the *Turks* in the spoyl of the *Rhode* Knights, and that the priviledges of the *Pruce* and *Hans* Towns Merchants may be suspended, till compensation be made to the English for the wrongs they have done them; to which the King in part accordeth. *Parl. 20 H. 6.*

The King by the Chancellor declareth in Parliament *Anno* 23. That the Marriage with *Margaret* the King of *Sicils* Daughter was contracted for enducing the Peace made with *France*, against which the Lords, as not by their advice *Parl. 23 H. 6.*

advice effected, make Proteſtation, and enter it on the Roll.

Rot. Parl. 25 *Hen.* 6. *in* 3. In the 25. the King intended to paſs in Perſon into *Franch*, and there to treat a Peace with the King, adviſeth with the Lords and Commons in Parliament, and Letters of Mart are granted againſt the *Brittains*, for ſpoyle done to the *Engliſh* Merchants.

H. 6.

Parl. 27 *H.* 6. The Lord *Haſtings*, and Abbot of *Glouceſter* declare in Parliament *Anno* 27. the preparation of the *French*, the breach by them of the Peace, the weak defence of *Normandy*, and the expiration ſhortly of the Truce, requiring ſpeedy advice and remedy.

Parl. 29 *H.* 6. In the 29. it was enjoined by Parliament, to provide for defence of the Sea and Land againſt the *French*.

Parl. 33 *H.* 6. It was commanded by the King to the States aſſembled, *Anno* 33. to adviſe for well ordering of his Houſe, payment of the Soldiers at *Callis*, guard of the Sea, raiſing of the ſiege of *Barwicke* made by the *Scots* againſt the Truce, diſpoiling of the number of 13000 Soldiers, arrayed the laſt Parliament, according of differences amongſt the Lords, reſtraining tranſportation of Gold and Silver, and acquitting the diſorders in *Wales*; of all which, Committees are appointed to frame Bills.

Edward 4. *Parl.* 7. *E.* 4. *Edward* the fourth by the Chancellor declareth in his ſeventh year to the Lords

Lords and Commons, that having made peace with *Scotland*, entred League with *Spaine* and *Denmark*, contracted with *Burgundy* and *Britany* for their ayd in the recovery of his right in *France*, he had now called them to give their Counsels in proceeding, which Charge in a second Seſſions was again propoſed unto them.

The like was to another Parliament in his twelfth year. *Parl.* 12 *E.* 4.

After this time their Journalls of Parliament have not been well preſerved, or not carefully entred, for I can find of this nature no Record, untill the firſt of *Hen.* 7. wherein the Commons, by *Thomas Lovell* their Speaker, Petition the King to take to Wife *Elizabeth* Daughter to *Edw.* 4. to which the King at their requeſt agreeth. *Henry* 7. *Rot. Parl.* 1 *hen.* 7.

The next is the third of *Hen.* the 8. in which from the King the Chancellor declareth to the three Eſtates the cauſe of that Aſſembly: The firſt to deviſe a courſe to reſiſt the Invaſion of the *Scots*, next how to acquit the quarrel between the King of *Caſtile*, and the Duke of *Geldres* his Allie; laſtly for aſſiſting the Pope againſt *Lewis* King of *France*, whoſe Bull expreſſing the injuries done the Sea Apoſtollick, was read by the Maſter of the Rolls in open Parliament; The Chancellor, the Treaſurer, and other Lords ſent down to the Commons to confer with them. *Henry* 8. *Parl.* 3 *H* 8.

Rot. Parl. 32 *Hen.* 8.

Ex inſtrumen. Orig.

The laſt in the 32*d* of the ſame year, where the Chancellor remembring the many troubles the State had undergone, in doubtful titles of Succeſſion, declareth, that although the Convocation had judged void the marriage of *Anne* of *Cleve*, yet the King would not proceed, without the Counſel of the three Eſtates: The two Archbiſhops are ſent to the Commons with the Sentence ſealed, which read, and there diſcuſſed, they paſs a Bill againſt the Marriage.

In all theſe paſſages of publick Counſells, wherein I have been much aſſiſted by the painful labour of Mr. *Elſings*, Clerk of the Parliament, and ſtill obſerve, that the Soveraign Lord, either in beſt advice, or in moſt neceſſities, would entertain the Commons with the weightieſt cauſes, either forrain or domeſtique, to apt and bind them ſo to readineſs of charge, and they as warily avoyding it to eſchew expence; their modeſt anſwers may be a rule for ignorant liberty to form their duties, and humbly to entertain ſuch weighty Counſells at their Soveraigns pleaſure, and not to the wild fancy of any Factious ſpirit. I will add one forrain example to ſhew what uſe have been formerly made by pretending Marriages, and of Parliaments to diſſolve them, their firſt end ſerved.

Maximilian

Maximilian the Emperour, and *Ferdinand* of *Spain*, the one to secure his possessions in *Italy*, the other to gain the Kingdom of *Navarre*, (to both which the *French* King stood in the way) projected a Marriage of *Charls* their Grand-child, with *Mary* the King of *Englands* sister, it was embraced, and a Book published of the benefits likely to ensue the Christian world by this match, upon this Ground, *Ferdinando* beginneth to incite *Henry* the 8*th* to war with *France*, presents him with succours, and designs him *Guien* to be the mark, and *Dorset* sent with men and munition to joyn with the *Spanish* forces then on the Borders of *Navarre*, the noise is they came to assist *Ferdinand* in the conquest of that Kingdom, which though false, gained such reputation, that *Albred* was disheartned, and *Ferdinand* possessed himself of that his Successors since retained, his end served, the English Army weak and weather-beaten, are returned fruitless.

Tract. matrimonial. 1510.

Ex literis orig. legator.

Maximilian then allureth the young and active King to begin with *France* on the other side, *Turwin* and *Turney* is now the object, whither *Henry* goeth with victory, but better advised (with that pittance) makes an end by peace with *France*, whose aim and heart was set on *Millain*.

Ex tract. Hen. 8. & Maximilian. 1511.

A new bait the old Emperour findeth

Ex tract. orig.

out to catch the Ambitious young man, he would needs reſign unto him the Empire, too heavy for his age to bear: The Cardinal *Sedunenſis* is ſent over to ſign the Agreement, which he did; and *France* muſt now again be made an Enemy: To prevent this danger *Francis* releaſed his Title to *Naples*, and offereth *Laogitia* his Daughter to *Maximilians* Granchild *Charls*, at *Noyon* this is acted in the dark, and at *Arno* the *French* Commiſſioners came up the back ſtairs with 60000 Florins, and they engroſſed Covenants, when the abuſed King of *Englands* Ambaſſador *Pace*, went down the other; the good Cardinal returneth home, meeteth by the way this foul play of his Maſter, and writ to the King of *England*, not in excuſe, but in complaint, *Contra perfidiam Principum*, an honeſt Letter. *Ferdinand* and *Maximilian* dead, *Francis* and *Charls* are Competitors for the Empire. *Henry* the 8*th* is courted for his help by both; the one with the tye of Alliance (for the Infant *Dolphin* had affyed *Henry* the 8ths Daughter) the other with the like, and Daughter, he will make his Daughter a Queen *in præſente*, which the *Dolphin* cannot do, and by his favour an Empreſs.

Ex tract. orig.

Ex litteris Ric. Pace Legat. Reg. Angliæ.

Ex litteris Car. Sedunenſis.

Ex litteris Carol. Reg. Hiſp.

To further *France* was but to win Ambition to prey upon all his Neighbours,

Ex litteris Car. Imperat. original.

bours, the English King is won, and winneth for *Spain* the Imperial wreath, which *Charls* in two Letters I have of his own hand then thankfully confessed. *Extract. Wind. 1522. Ex instru. orig. jurament.*

From *Aquisgrave* he cometh Crowned in haste to *England*, wedded at *Windsor* the Kings Daughter, contracteth to joyn in an invasion of *France*, to divide it with his Father in Law, by the River of *Rodon*, and sweareth at the Altar in *Pauls* to keep faith in all.

Bourbon is wrought from *France*, and entreth the *Province* with an Army, paid with King *Henries* money; *Suffolke* passeth with the English Forces by *Picardy*: But *Charles* the Emperour, who should have entred *Guyen* faileth, drawing away *Burbon* from a streight siege of *Marseilles*, to interrupt *Francis* then entred *Italy*, and so the enterprize of *France* is defeated, the French King is at *Pavie* taken Prisoner by *Pescaro*, led to *Grone*, hurried into *Spain* by the Emperours Galleys, and forced at *Madrid* to a hard bargain, without privity of *Henry* the 8th or provision of him, who had been at the greater charge of that War. Now the Emperour affecteth that Monarchy that hath ever since (as some say) infected the *Austrian* Family. *Ex literis Richardi Pace, & Iohannis Russel.* *Ex tract. Madritensi 526. Ex Rot. Com. Russel & Pace.*

Rome, the fatal old Seat of Govern- *Ex instru. orig. Carol. 5.*

ment, must be the Seat of his Empire: *Burbon*, and after *Moncado* are directed to surprize it. *Angelo* the observant Fryer is sent before the Pope, consigned by the Emperours Election, who meant (as his own instructions warrant) to restore that right again to the Imperial Throne.

Ex instru H. 8. Bryano & Gardinen.

Charls will follow him from *Barcellona* with an Army; but before, he must call a Parliament at *Toledo*, whether by election or affection, I dare not divine, that Assembly maketh Protestation against their Masters Marriage with *England*, and assign him *Isabella* of *Portugal* for a wife, the Instruments are sent signed by the Imperial Notary to *Henry* the 8th. And *Charls* bemoneth the streight he is forced into by them, but before all this he had wrought from *Rome*, a Dispensation for his former out-hand Marriage; sending not long after *Gonzado Ferdinando* his Chaplain, to invite the Earl of *Desmon* to rebell in *Ireland*.

Ex literis Cuthb. Tunstall Epis Lon. Legat. Hen. 8. in Hispan. Ex protestat. orig. Toledonensi Parl.

Ex literis Car. Wolsey & Greg. Lusathis. Ex Instru. Signat. Ch. Im. Gonzado Ferdinand. Capel. suo dat. 24 Feb. Ex lib. N N. N. Dom. Car.

And to invite *James* the First, by promise of a Marriage to *Christian* of *Denmarks* Daughter, his Neece; to enter the *English* Borders, to busie the *English* King, for asking a strict accompt of that indignity. *Henry* the 8th with Providence and good success over-wrought these dangers, and by the League of *Italy* he forced him to moderate Conditions

Ex literis intercept. à Com. Northumb. Custod. March. Scotiæ. Ex tract. orig. in Arch. West. Ex tract. Cambrens. 1529.

at

at the Treaty of *Cambray*, 1529. He being made *Caput fœderis* against the Emperour.

I may end your Honours trouble with this one Example, and with humble prayers, That the Catholique may have so much of Princely sincerity, as not to intend the like, or my good gracious Master a jealous vigilancy to prevent it, if it should, &c.

THAT THE SOVERAIGNS PERSON

is Required in the Great

COUNCELLS, OR ASSEMBLIES OF THE STATE,

As well at the Consultations as at the Coucluſions.

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,
Printed in the Year 1672.

THAT THE

SOVERAIGNS

PERSON

[illegible]

[illegible]

OR

[illegible]

OF THE

STATE,

As well at the Consultations

[illegible]

Written by Sir [illegible] Cotton, Knight

[illegible] Baronet.

LONDON

Printed in the Year 1672.

THAT THE SOVERAIGNS PERSON is Required in the Great COUNSELS, OR ASSEMBLIES OF THE STATE, &c.

SInce of these Assemblies few Diaries, or exact Journal Books are remaining, and those but of late, and negligently entred, the Acts, and Ordinances only reported to Posterity are the Rolls, this question though clear in general reason, and conveniency, must be wrought for the particular, out of such incident proofs, as the Monument of Story, and records by pieces leave us. And to deduce it the clearer down, some essen-

eſſential circumſtances of name, time, place, occaſion, and perſons, muſt be in a general ſhortly touched, before the force of particular proofs be laid down. This noble body of the State, now called the houſes in Parliament, is known in ſeveral ages, by ſeveral names *Conſilia* the Counſels in the old times, after *Magnum*, *Commune*, and *Generale*, *Conſilium*, *Curia Magna*, *capitalis*, and *Curia Regis*; ſometimes *Generale Placitum*, and ſometimes *Synodi* and *Synodalia decreta*, although aſwell the cauſes of the Commonwealth as Church were there decided. The name of Parliament, except in the Abbots Chapters, not ever heard of until the raign of *King John*, and then but rarely. At the *Kings* Court were theſe Conventions uſually, and the Preſence, Privy Chamber, or other room convenient, for the *King* in former times as now then uſed; for what is the preſent Houſe of Lords, but ſo, as at this time, and was before the fyring of the Pallace at *Weſtminſter*, about the ſeventeenth of *Henry* the eighth, who then and there recided.

Ex Conſiliis Reg. Saxon. Cantuar. Glanvil. lib. Ely.

Leges Ethelredi. Ingulphus. Croylandenſis. Regiſtra Monaſter.

Palatium Regale. Weſtm.

Improbable it is to believe the *King* was excluded his own Privie Chamber, and unmannerly for gueſts to barre him the company, who gave to them their entertainment. It was at firſt as now *Edicto Principis*, at the *Kings* pleaſure. Towards the end of the *Saxons*; and in the

Regiſt. Elienſis.

the firſt time of the *Norman* Kings, it ſtood in *Cuſtome-Grace*, to *Eaſter*, *Whitſontide*, and *Chriſtmas* fixed. The Biſhops, Earls, and Lords, *Ex more*, then Aſſembled (ſo are the frequent words in all the Annalls) the King of courſe then reveſted with his imperial Crown by the Biſhops and Peers aſſembling, in recognition of their preobliged faith and preſent ſervice, untill the unſafe time of King *John*, by overpotent and popular Lords, gave diſcontinuance to this conſtant grace of Kings, and then it returned to the uncertain pleaſure of the Soveraigns ſummons. The cauſes then as now of ſuch Aſſemblies, were proviſions for the ſupport of the State in Men and Money, well ordering of the Church and Common wealth, and determining of ſuch cauſes, which ordinary Courts *neſciebant judicare* (as *Glanvill* the grand judge under *Henry* the ſecond ſaith) where the preſence of the King was ſtill required, it being otherwiſe abſurd to make the King aſſentor to the Judgments of Parliament, and afford him no part in the conſultation. The neceſſity thereof is well and fully deduced unto us in a reverent monument not far from that grave mans time in theſe words, *Rex tenetur omni modo perſonaliter intereſſe Parliamento, niſi per Corporalem agritudinem detineatur.* Then to acquaint

Annales Monaſteriorum. *Liber de Bello.*

Regiſt. de Wig.

Iohannes Everſden. *Matthew Paris.* *Hoveden.*

Bracton. *Glanvill.* *Fleta.*

Modus tenendi Parliament.

acquaint the Parliament, of such occasion of either house, *Causa est quod solebat Clamor & Murmur esse pro absentia Regis, quia res damnosa & periculosa est toto Communitati Parliamenti & Regni cum Rex à Parliamento absens fuerit, Nec se absentare debet, nec potest nisi duntaxat in Causa supradicta.* By this appeareth the desire of the State to have the Kings presence in these great Counsels by express necessity. I will now endeavour to lead the practise of it from the dark and eldest times to these no less neglected of ours.

Ex Registris Concil. Cantuariæ.
Ex Consilio Withredi Regist.

From the year 720. to neer 900. during all the *Heptarchy* in all the Councels remaining composed *Ex Episcopis, Abbatibus, Ducibus, satrapis, & omni dignitate optimatibus Ecclesiasticis scilicet & secularibus personis pro utilitate Ecclesiæ, & stabilitate Regni pertractand.* Seven of them are *Rege præcedente* and but one by deputy; and incongruous it were and almost non-sence, to bar his presence that is president of such an Assembly.

Ex Synodis & legibus Alfredi Ethelredi, Edgari.
Ex Registr. Elien.
Ex Registr. Abigtonensi.
Chronicon de Waverley.

The *Saxon* Monarchy under *Alfred, Ethelred,* and *Edgar* in their Synods or *Placita generalia* went in the same practise and since. Thus *Ethelwald* appealed against Earl *Leofrick,* From the County and *generale Placitum* before King *Ethelred* and *Edgira* the Queen, against Earl *Goda* to *Eldred* the King at *London,*

Congre-

Congregatis Principibus & ſapientibus Angliæ. In the year 1502. under *Edward* the Confeſſor *Statutum eſt placitum magnum extra Londinum quod Normanni ex Francorum conſuetud. Parliamentum appellant* where the King and all his Barons appealed *Goodwin* for his Brother *Alureds* death, the Earl denyed it, and the King replyed thus, My Lords, you that are my liege men Earls and Barons of the Land here Aſſembled together have heard my Appeal and his Anſwer, unto you be it left to do right betwixt us.

Geſta Sancti Edwardi Galice.

Alured. Rivalenſis, vita Edwardi Confeſſoris.

At the great Councel at *Weſtminſter* 1072. in *Eaſter* week, the cauſe of the two Archbiſhops *Lanfrank* and *Thomas*, *ventilata fuit*, *in præſentia Regis Willielm.* And after at *Winſor*, *finem accepit in præſentia Regis.* At the ſame feaſt in the year 1081. (the uſual time of ſuch Aſſemblies) the King, the Archbiſhops, Biſhops, Abbots, Earls, and chief Nobility of the Kingdom preſent (for ſo are the words of the Records) the cauſe between *Arſaſt* Biſhop of *Norway*, and *Baldwyne* Abbot of *Bury* was alſo argued, *Et ventilata in publica jubet Rex teneri judicium Canſis auditis Amborum.*

Regiſt. Cantuarien.

Regiſt. Sancti Edmundi.

The diligence of his Son the Learned *Henry* the firſt in executing of this part of his kingly function is commended to poſterity, by *Walter Mape*, a Learned man,

Walterus Mape de nugis curialium.

man, trained up, and in favour with *Henry* the second, in these words, *Omnia Regali more moderamine faciebat, neminem volebat agere justitia vel pace. Constituerat autem ad tranquilitatem omnium in diebus vacationis, vel in domo magna subsidio copiam sui faceret, usque ad horam sextam,* (which was till twelve as we now accompt) *secum habens Comites, Baronet, Proceres, & Vavasores,* to hear and determine causes, whereby he attained the surname of *Leo justitiæ* in all stories, and so out-went in quiet guidance of the State his best progenitors. The next of his name that succeeded is remembred every where for his debates and his disputes he had in person with *Thomas* the Archbishop, and others of his part, at the great Counsels both at *London*, *Clarendon*, and *Northampton*, for redress of the many complaints of the Commons, against the outrages and extortions of the Clergy; one thousand five hundred and fifty seven, *Die Penticostis apud sanctum Edmundum*, the same *King Diademate Insignitus*, with the Bishops, Abbots, Earls, and Barons of the *Kingdome*, sate daily himself and heard all the debates, concerning the Liberties and Charters of *Battle Abbey*. The interlocutory Speeches as well of the *King*, as Lords and parties are at full related in a Register of that Church.

Hen. Huntingdon. Malmsbury.

Vita Tho. Cantuar. per Fitz-Stephanum. Gesta Hen. 2. Benedictis Abb. Auctore.

Regist. Monast. de Bello.

The

The ſute between the Church of *Lincolne* and Saint *Albanes*, *in præſentia Regis Henry Archepiſcop. & Epiſcop. omnium Anglia, & Comitum & Baronum Regni*, was at *Weſtminſter* debated and ended: And had alone of memory and truth been a protector of the publick Records of the State, as awe of the Clergies cenſure was a guard to theirs, in tempeſtuous times, we had not been now left to the only friendſhip of Monkes diligence; for example in this kind. At *Lincolne* the Archbiſhops, ſome Biſhops, but all the Earles and Barons of the Realme, *una Cum Rege Johanne Congregati ad colloquium de concordia Regis Scotiæ*, ſaith the Regiſter of that Church. *Regiſt. Lincoln.* *Liber Burtoni enſ. Monaſterii*

This uſe under King *Henry* the third, needeth no further proofe, than the Writ of ſummons (then framed) expreſſing that Kings mind and practiſe; It is *Nobiſcum & Prælatis & Magnatibus noſtris quos vocari fecimus ſuper præmiſſis tractare & Conſilium impendere*, which word *Nobiſcum* implieth plainely the Kings preſence; what the ſucceeding practiſe was, from the fifteenth year of the ſecond *Edward*, the proper Records of this inquiry (the Journall Books being loſt) I am enforced to draw from out the Rolls of Acts, wherein ſometimes by chance they are remembred. *Edward* the ſecond was pre- *Rot. Claus. Anno 59. E. 3.*

Rot. Parl. 15. *Edw.* 2. sent in Parliament in the fifteenth year of his Raigne at the complaint against the *Spencers*, and at the second Parliament that year, for the repeale of that banishment.

Rot. Parl. 4. *Edw.* 3. In the fourth of *Edward* the third, the King was present at the accusation of *Roger Mortimer*, but not at the Tryall.

Rot. Parl. Anno 5. *Edw.* 3. And the next year in the treaty of the French affaires.

In the sixth year *Intererat Rex in Causa Johannis de Gray & Willielmi de Zous.* The same year the second day in Parliament, the King was present at the debate about his Voyage into *Scotland.*

Rot. Parl. Anno 15. *Edw.* 3. In the fifteenth year the King in the Painted Chamber sitting with the Lords in consultation, the Archbishop after pardon prayed, that for better clearing himself, he might be tryed in full Parliament by his Peers; which was granted.

Rot. Fa l. Anno 17. *Edw.* 3. In the seventeenth in *Camera Alba*, now the Court of requests, *Rex cum magnatibus conveniunt Communes super negotiis Regni.*

Chronicon Henrici Knighton. In the tenth of *Richard* the second, the King departed from the Parliament in some discontent, when after some time, Lords are sent to pray his presence, and informe his Majesty that if he forbear his presence amongst them fourty

fourty dayes, that then *Ex antiquo Statuto*, they may returne *absque dampno Regis*, to their severall homes.

Henry the fourth began his first Parliament the first of *November*, and was the twenty seventh of the same moneth at a debate about the Duke of *Britany*, the thirtieth day the Cause of the Archbishop of *Canterbury* was before him proposed only. *Rot. Parl. Anno 1. Hen. 4.*

The third of *November* he was at the debate, whether the Commons had right of Judicature yea or no. *Rot. Parl. Anno 2. Hen. 4.*

On the tenth he was with the Lords in their consultation about the expedition against the *Scots*; the creation of the Duke of *Lancaster*, and prohibition of a new sect for entring his Kingdom. Some Ordinances were at this time consulted of before him about the staple, and the sentence against *Haxey* after dispute revoked. *Rot. Parl. 10. Hen. 4.*

This King began his second Parliament, the twentieth of *January*, and on the ninth of *February* was present to make agreement betwixt the Bishop of *Norwich*, and *Thomas* of *Erpingham*. *Anno 2. Hen. 4. Rot. Parl.*

On the twentieth day of the same moneth he was present at Counsell for repressing the *Welch* Rebells, for revocation of stipends, and concerning the Priors Aliens.

On the 26. they advise before the King of the *Cistertians* order.

On the second of *March* of the Statute of Provisions the Keeper of the privy Seal, of relieving the two Universities.

Rot. Parl. Anno 4. Hen. 4. And on the ninth of *March*, they mediate before the King a reconciliation betwixt the Earl of *Rutland* and the Lord *Fitzwater*.

Rot. Parl. Anno 5. Hen. 4. He also began a Parliament in the fifth year upon the fifteenth of *January*, and on the twentieth they advise before the King of guarding the Seas, and the *Welsh* rebellion.

On the eighth of *February* the Earl of *Northumberland* is charged before the King, and in his presence, and by his permission, divers of whom he knew no harme, were removed from the Court.

The next day at the Petition of the Commons, he took upon him to reconcile the Earles of *Northumberland* and *Westmerland*. And on the two and twentieth of *February* of the Earles of *Northumberland* and *Dunbarre*.

Rot. Parl. Anno 27. H. 6. In a Parliament of 27 of *Hen.* the 6. a Challenge of seate in Parliament betwixt the Earles of *Arundell* and *Devonshire*, was examined and appointed by the KING with the advice of the Lords.

Rot. Parl. Anno 28. Hen. 6. In that great capitall cause of the Duke

Duke of *Suffolke*, the 28 of *Hen.* 6. I finde not the King once present at the debates, but the Duke appealing from his tryall by Peerage, to the King, is brought from out of the house of Lords to a private Chamber, where the King after the Chancellor in gross had declared his offence, and his refusall, the King himself (but not in place of judgement) adjudged his banishment.

Rot. Parl. Anno Edw. 4.

By the Rolls of *Edward* the fourth, it appeareth that he was many dayes, besides the first and last of Parliament, and there was entred some Speeches by him uttered, but that of all the rest is most of remark, the reporter then present thus tells it. This of the Duke of *Clarence* and the *King*, *Tristis disceptatio inter duos tantæ humanitatis Germanos, nemo arguit contra ducem nisi Rex, nemo respondit Regi nisi dux*, some other testimonies are brought in, with which the Lords are satisfied, and so *Formârunt in eum sententiam damnationis*, by the mouth of the Duke of *Buckingham*, the Steward of *England*, all which was much distasted by the House of Commons.

Registrum Cralanden.

The Raigne of *Henry* the seventh affords us upon the Rolls no one example. The journall Bookes are lost, except so much as preserves the passages of eight dayes in the twelfth year of his Raigne; in which the *King* was

Ex Chartâ Anno 12. H. 7.

some dayes present at all debates, and with his own hand the one and thirtieth day of the Parliament, delivered in a bill of Trade then read, but had the memorials remained, it is no doubt but he would have been as frequent in his Great Councell of Parliament, as he was in the *Starre-Chamber*, where by the Register of that Court it appeareth as well in debate of private causes, that toucheth neither life nor Member, as those of publique care, he every year of all his raign was often present.

Ex Regist. Camera Stellata.

Of *Henry* the eighth, memory hath not been curious, but if he were not often present, peradventure, that may be the cause, which the learned Recorder *Fleetwood*, in his preface to the Annalls of *Edward* the fifth, *Richard* the third, *Henry* the seventh, and *Henry* the eighth hath observed in the Statutes made in that *King*s dayes, for which cause he hath severed their Index from the former: And much lay in the will of *Wolsey*, who ever was unwilling to let that *King* see with his own eyes.

Ex Annalibus Fleetwood Recordat. London.

Edward the sixth, in respect of his young years may be well excused, but that such was his purpose it appears by a memorial of his own hand, who proportioning the affairs of Councell to several persons, reserved those of greatest weight to his own presence in these words. *These to attend the matters of State,*

Memorial. E. 6. propria manu.

that

that I will sit with them once a week to hear the debating of things of most importance.

Unfitness by sex in his two succeeding sisters, to be so frequent present as their former Ancestors, led in the ill occasion of such opinion and practise.

Most excellent Majesty, your most humble servant in discharge of obedience and zeal, hath hastned up this abstract, vvhich in all humility he offers up unto your gracious pardon. Presumption to enter the Closet of your Counsell is far from his modesty and duty, vvhat hath been your powerfull Command, he hath made his Work, vvhat is fit to be done vvith it, is only your divine judgment. He dares not say Presidents are vvarrants to direct; The success (is as vvorthy observation) as the knowledge of them, sometimes have made ill example by extension of Regal power, through ill Counsels vvith ill success. Some as bad or vvorse vvhen the people have had too much of that, and the *King* too little, the danger no less. To cut out of either of these patterns to followv, vvere but to be in Love vvith the mischief, for the example. The clearer I present this to your Highness, the nearer I approach the uprightness of your heart, the blessed fortune of your happy Subjects: Pardon, most Sacred Majesty, that I offer up unto your admired vvisdome, my vveak, but dutifull observations out

of all the former gathering. In Consultations of State and decisions of private plaints, it is clear from all times, the *King* not only present to advise and hear but to determine also, in Cases Criminal, and not of Bloud, to bar the *King* a part vvere to exclude him the *Star-chamber*, as far from reason as example. The doubt is then alone in Crimes meer Capital; I dare not commend too much the times that lost these patterns, either for the Causes or Effects; but vvish the one and other never more. To proceed by publick Act of Commons, Peers, and *King*, vvas most usuall. Appeals are given by Lavv of *Hen.* 4. of this in novv debate, the vvay I fear, as yet obscure, as great advice to State is needfull for the manner, as for the Justice. The example in the cause of the Duke of *Suffolke*, 28 *Hen.* 6. vvhere the *King* gave judgement vvas protested against by the Lords. That of the Duke of *Clarence* of *Edw.* 4. vvhere the Lords and the high Stevvard the Duke of *Buckingham* gave judgement, vvas protested against by Commons, in both of these the *King* vvas sometimes present, but vvhich of those may suit these times I dare not guess.

That of *Primo Rich.* 2. of *Gomeneys* and *Weston*, accused by the Commons plaint for Treason, vvas tried by the Lords in absence of the *King*, but sentenced by the

the Lord *Scroop*, Stevvard for the *King*. The Accuſed vvere of the rank of the Accuſers, Commons and not Lords: Hovv this vvill make a Preſident to judg in cauſes Capital, a Peer of Parliament, I cannot tell. But if I ſhould conceive a vvay anſvverable as well to Parliament as other Courts, if the *King* and the Lords vvere Tryers, and the Commons aſſenters to the judgment to hear together the Charge, and evidence; The Lords as doth the Jury in other Courts, to vvithdravv, to find the Verdict, and then the Stevvard, for the *King*, to pronounce the Sentence. It paſſeth ſo by vvay of Act and Courſe that carrieth vvith it no exception, and likely to avoid all curious queſtions of your Highneſs preſence there.

If your humble ſervant hath in this expreſſion of his deſire to do you ſervice, preſumed too far, his Comfort is, that vvhere zeal of duty hath made the fault, benignity of goodneſs vvill grant the Pardon.

A DISCOURSE OF THE LAWFULLNES OF COMBATS

To be performed in the presence of the KING, or the Constable and Marshall of ENGLAND.

Written by Sir *Robert Cotton*, Knight and Baronet. 1609.

LONDON;
Printed in the Year 1672.

DISCOURSE

OF THE

LAWFULNESS

OF

SOMMATHS

To be perpetuated in the presence of the KING, the Constable and Marshall of

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To be performed in the presence of the KING, &c.

COMBAT.

WHere difference could not be determined by legal proof or testimony, there was allowed the party his purgation.

Combat. Ex lib. 3. Const. Car. magni de testibus. Bract. l. 3. c. 18. fol. 137. tit. Corona.

Which was either { *Canonicall* or *Legall.*

The first by Oath, and called *Canonicall*, because it is Lawfull.

The

The other, which was either *Per aquam candentem*, *ferrum ignitum*, or *Duellum*, called *vulgare*, because it was brought in by the barbarous people, without the pretext of any Law; untill the *Gothish* and *Lombard* Kings, seeing their Subjects more addicted to Martiall Discipline than to Civill Government, reduced those trialls to Form and Rule: Which Constitutions are now incorporated in the Civill Law.

Leges Lombard. fol. 17. b. Luitprandus Rex. Propter consuetudinem gent. legem impiam vitare non possumus.

From the Northern Nations (of which the *Saxons* and *Normans*, or *Northmanni* are part) it was brought into this Land; And although it grew long ago, both by the Decrees of *Desiderius Luitprandus*, and the Mother Church, discontinued amongst the *Lombards*, as soon as they grew Civilized in *Italy*; yet it continued till of late with us, as a mark of our longer barbarisme: Neither would we in this obey the See of *Rome*; to which we were in many respects observant children; which, for that in the Duell, *Condemnandus sæpe absolvitur, & quia Deus tentatur*, decreed so often and streightly against it.

De Papin. Hist. l. 9. c. 11. Lib. 5. Decret. 2. part. ca. 1. qu. 40.

In *England* this single Combat was either granted the party by license extrajudiciall, or legall process. The first was ever from the King, as a chief flower of his Imperiall Crown, and it was for exercise of Arms especially.

Thus did *Richard* 1. give leave for

Rich. 1. Parl. Anno 20.

Tour-

Tournaments in five places in *England*; *inter Sarum & Winton*; *inter Stamford & Wallingford, &c. ita quod pax terra nostra non infringetur, nec potestas justiciaria minorabitur*: For performance whereof, as likewise to pay unto the King according to their qualities or degrees, a sum of money proportionable, and that of a good value and advantage to the Crown, they take a solemn Oath.

The like I find in 20 *E.* 1. and 18 *E.* 3. granted *Viris militaribus Comitatus Lincoln*, to hold a Just there every year. *Richard Redman* and his three Companions in Arms, had the licence of *Rich.* 2. *Hastiludere cum Willielmo Halberton, cum tribus sociis suis apud Civitat. Carliol.* The like did *H.* 4. to *John de Gray*; and of this sort I find in records, examples plentifull. 20 *E.* 1. *Pat.* 28. *m.* 3. *in* 44. *part* 2. *Pat. part* 3. *Anno* 19. *R.* 2. *m.* 16. *Pat. Anno* 5. *H.* 4. *m.* 8.

Yet did Pope *Alexand.* the fourth, following also the steps of his Predecessors, *Innocentius* & *Eugenius*, prohibit throughout all Christendome, *Detestabiles nundinas vel ferias quas vulgo Torniamenta vocant, in quibus Milites convenire solent ad ostentationem virium suarum & audacia, unde mortes hominum & pericula animarum sæpe conveniunt.* And therefore did *Gregory* the tenth send to *Edward* the first his Bull *pro subtrahenda Regis præsentia à Torniamentis à partibus Francia*, as from a spectacle altogether in a Christian Prince unlawfull: For, *Gladiatorum sceleribus* *Lactan. divin. Instit. cap.* 6.

non

non minus cruore profunditur qui spectat, quàm ille qui facit, saith *Lactantius*. And *Quid inhumanius quid acerbius dici potest*, saith Saint *Cyprian*, then when *homo occiditur in voluptatem hominis, & ut quis possit occidere peritia est, usus est, ars est. Scelus non tantùm geritur, sed docetur. Disciplina est ut primere quis possit, & Gloria quòd periunt.*

St. Cyp. l. 1. Ep. 2.

Euseb. in vita Constant. l. 3. Zozemus. l. 1. c. 8. l. 2. Cod. & Glad. Ex Cod. Theodos. l. 5. c. 26.

And therefore great *Constantine*, as a fruit of his conversion (which *Honorius* his Christian successor did confirme) established this edict: *Cruenta spectacula in otio civili & domestico quiete non placent: quapropter omninò Gladiatores esse prohibemus.* And the permission here amongst us no doubt, is not the least encouragement from foolish confidence of Skill, of so many private quarrells undertaken.

Combats permitted by Law, are either in causes Criminal or Civil, as in appeals of Treason, and then out of the Court of the Constable and Marshal; as that between *Essex* and *Montford* in the raign of *Henry* the first, for forsaking the Kings Standard.

Fecolinus de Brackland cap. 12. H 1.

That between *Audley* and *Chatterton* for betraying the fort of Saint *Salviours* in *Constant*, the eighth year of *Richard* the second.

2. Part. pat. 8. R. 2. Memb. 8. Rot. Vascon. Anno 9. H. 4.

And that of *Bartram de Usano*, and *John Bulmer*, *coram Constabulario & Mariscallo Angliæ de verbis proditoris*, *Anno 9. H. 4.*

H. 4. The form hereof appeareth in the Plea Rolls, *Anno* 22. *E.* 1. in the caſe of *Veſſey*: And in the Book of the Marſhals Office, in the Chapter *Modus faciendi Duellum coram Rege.* *Placita coram Rege* 22 *E.* 1.

In Appeals of Murther or Robbery, the Combat is granted out of the Court of the Kings Bench. The Preſidents are often in the books of Law, and the form may be gathered out of *Bracton*, and the printed Reports of *E.* 3. and *H.* 4. All being an inhibition of the *Norman* Cuſtomes, as appeareth in the 68th. Chapter of their Cuſtomary; from whence we ſeem to have brought it. *Bract. l.* 3 *c.* 21 *Anno* 17 *E.* 3. & *Anno* 9 *H.* 4. *Ex Conſuetud. Duc. Norman. cap.* 68.

And thus far of Combats in Caſes Criminall.

In Caſes Civill, it is granted either for Title of Arms out of the Marſhals Court; as between *Richard Scroop* and Sir *Robert Groſvenor*, *Citſilt*, and others, Or for Title of Lands by a Writ of Right in the Common-Pleas, the experience whereof hath been of late: as in the Caſe of *Paramour*; and is often before found in our printed Reports, where the manner of darraigning Battail is likewiſe; as 1 *H.* 6. and 13 *Eliz.* in the L. *Dyer* expreſſed. *Tit. de Equela multri fol.* 145. *Breve Reg. orig. apud R. G. C.* *Reports Anno* 1 *H.* 6. *Dyer Anno* 13 *Eliz.*

To this may be added, though beyond the Cogniſance of the Common Law, that which hath in it the beſt pretext of Combat; which is the ſaving of Chriſtian bloud, by deciding in ſingle fight, that

which would be otherwise the effect of publick War.

Such were the Offers of *R. 1. E. 3.* and *R. 2.* to try their right with the *French* King body to body. And so was that between *Charles* of *Arragon*, and *Peter* of *Terravone* for the Isle of *Sicilie*, which by allowance of Pope *Martin* the 4th. and the Colledge of Cardinalls, was agreed to be fought at *Bordeux* in *Aquitain*. Wherein (under favour) he digressed far from the steps of his Predecessors, *Eugenius*, *Innocentius*, and *Alexander*; and was no pattern to the next of his name, who was so far from approving the Combat between the Dukes of *Burgundy* and *Glocester*, as that he did inhibit it by his Bull; declaring therein, that it was *Detestabile genus pugnæ, omni divino & humano jure damnatum; & fidelibus interdictum*; And he did wonder and grieve, *quod ira, ambitio, vel cupiditas honoris humani ipsos Duces immemores faceret Legis Domini & salutis eternæ, qua privatus esset quicunque in tali pugna decederat. Nam sæpe compertum est superatum fovere justitiam; Et quomodo existimare quisquam potest rectum judicium ex Duello? in quo inimicus Veritatis Diabolus dominatur.*

Rog. Hovoden & Adam Merimuth in vita E. 3. Rot. Fran. Anno 7 R. 2. m. 21. Compane de la famghe Regali & Spagna. f. 110. Joan. de Molevia Chron. de Leg. Reg. de Aragon. fol. Bulla Martini 5. dat in Kal. Maij Anno Pontific. 8.

And thus far of Combates, which by the Law of the Land, or leave of the Soveraign, have any Warrant.

It rests to instance out of a few Records,

cords, what the Kings of *England*, out of Regal Prerogative have done, either in reſtraint of Martial exerciſes, or private quarrels, or in determining them when they were undertaken: And to ſhew out of the Regiſters of former times, with what eye the Law and Juſtice of the State did look upon that Subject, that durſt aſſume otherwiſe the Sword or Sceptre into his own hand.

The reſtraint of Tournaments by Proclamation is ſo uſuall, that I need to repeat, for form ſake, but one of many. *Placita anno 29. & 31 E. 1.*

The firſt *Edward*, renowned both for his Wiſedome and Fortune, *Publice fecit proclamari, & firmiter inhiberi, ne quis, ſub foriſfactura terrarum & omnium tenementorum, torneare, bordeare, juſtas facere, aventuras quærere, ſeu alias ad arma ire præſumat, ſine Licentia Regis ſpeciali.*

By Proclamation *R.* 2. forbad any but his Officers, and ſome few excepted, to carry any Sword, or long Baſtard, under pain of forfeiture and Impriſonment. *Rot. clauſ. anno 19 R. 2. dat. 26 Feb.*

The ſame King, in the 19th of his raign, and upon the Marriage with the *French* Kings daughter, commanded by Proclamation, *Ne quis Miles, Armiger, ſeu alius Ligens aut Subditus ſuus, cujuſcunque ſtatus, aliquem Francigenam, ſeu quemcunque alium qui de poteſtate & obedientia regis exiſterit*, upon what pretence ſoever, *ad aliqua facta Guer[illa]rum, ſeu actus armo-* *Clauſ. in dorſo 19 R. 2.*

armorum exigat sub forisfactura omnium quæ Regi forisfacere poterit.

And as in the Kings power it hath ever rested to forbid Combates, so it hath been to determine and take them up.

Com. St. Albans. 22 R. 2. Thus did *R.* 2. in that so memorable quarrel between *Mowbray* and *Hereford*, by exiling them both. And when Sir *John de Aneſtie*, and *Tho. de Chatterton*, were ready to fight, *eandem querelam Rex in manum ſuam recepit*, saith the Record.

2. Pars pat. anno 8 R. 2. Rot Vaſcon. anno 9 H. 4. m. 14. And *De mandato Regis direptum eſt prælium inter Johannem Bolmer, & Bertramum de Veſana* in the time of *Henry* the fourth.

Sir *John Fitz-Thomas* being produced before the Earl of *Gloceſter*, Deputy of *Ireland*, and there Challenged by Sir *William de Veſſy* to have done him wrong, in reporting to the King, that Sir *William* aforesaid should have spoken against the King defamatory words, of which Sir *John* there presented a Schedule: *Willielmus, audito tenore Schedulæ prædictæ, dementitus eſt prædictum Johannem, dicendo: mentitus eſt tanquam falſus, & proditor, & denegavit omnia ſibi impoſita, & tradidit vadium in manum Juſticiarij, qui illud admiſit. Et prædictus Johannes advocavit omnia & dementitus eſt ſimil. dictum Willielm.* Whereupon the Combat was granted, and the time and place inrolled:

Placita coram Rege. 22 E. 1.

led: but the Proceſs was adjourned into *England* before the King; who with his Counſell examining the whole proceeding, and that *Quia Willielmus attachiatus fuit ad reſpondend. Johanni prædicto ſuper diffamatione principaliter, & non ſit citatus in Regno iſto placitare in Curia Regis, placita de diffamationibus, aut inter partes aliquas, Duellum concedere in placitis de quibus cognitio ad curiam Regis non pertinet*; And for that the Judge, *vadia prædictorum Johannis & Willielmi cepit priuſquam Duellum inter eos conſideratum & adjudicatum fuit, quod omnina contra legem eſt & conſuetudinem Regni:* Therefore, *per ipſum Regem & Concilium concordatum eſt, quod proceſſus totaliter adnulletur*: And that the ſaid *John* and *Willlam* eant *inde ſine die*; *ſalva utrique eorum actione ſua ſi alias de aliquo in prædicto proceſſu contento loqui voluerint.* Rot. Parl. anno 23 E. 1.

In a Combat granted in a Writ of right, *Philip de Pugill*, one of the Champions, *oppreſſus multitudine hominum ſe defendere non potuit:* Whereupon the People againſt him *in perpetuam defamationem ſuam in eodem Duello Creantiam proclamabant*, which the King underſtanding, *Aſſenſu Concilii ſtatuit, quod prædict. Philippus propter Creantiam prædict. liberam legem non omittat, ſed omnibus liberis actibus gauderet ſicut ante Duellum gaudere conſuevit.*

What penalty they have incurred, that without law or licenſe have attempted the practiſe of Arms, or

their own Revenge, may somewhat appear by these few Records following.

Pat. in dors. 4 H 3. *William* Earl of *Albemarle* was Excommunicated *Pro Torniamento tento contra præceptum Regis.* To which agreeth at this day for the Duell the Councel of *Trent*, and that held at *Biturià* in *Anno* 1584.

Conc. Trid. Sess. 9. Tit. Decreta Reform. Ex Con. Biturien. fol 1022.

Claus. anno 3 E. 1. m. 24 *John Warren* Earl of *Surrey* was fined at a thousand marks *pro quadam transgressione in insultu facto in Alanum de la Zouch.*

Parl anno 24 H. 6. *Talbois* was committed to the Tower for attempting to have slain the Lord *Cromwell.*

And because *Robertus Garvois insultum fecit, & percussit Edwardum filium Willielmi, inquisitio facta est de omnibus tenementis & catallis prædicti Roberti.*

Edw. Dallingrige accused by Sir *John St. Leger* before the Kings Justices *pro venatione, & aliis transgressionibus*, answered, that these accusations were false, and threw down his Glove, and challenged *disrationare materias prædictas versus prædictum Johannem per Duellum. Sed quia contra legem terræ vadiavit inde Duellum*, he was committed to Prison, *quousque satisfaceret Domino Regi pro contemptu.*

Placita de quo Warranto anno 8 R. 2. Sussex.

Sir *Nicholas de Segrave*, a Baron, Challenged Sir *John de Cromwell*, and, contrary to the Kings prohibition, because he could not fight with him in *England*, dared him to come and defend himself in *France*;

France: therein (as the Record ſaith) ſubjecting as much as in him lay, the Realm of *England* to the Realm of *France*, being ſtayed in his paſſage at *Dover*, was committed to the Caſtle, & brought after to the Kings Bench; and there arraigned, before the Lords, confeſſed his fault, & ſubmitted himſelf to the King, *de alto & baſſo:* Wherefore judgement is given in theſe words, *Et ſuper hoc Dominus Rex volens habere aviſamentum Comitum, Baronum, Magnatum, & aliorum de conſilio ſuo, injunxit eiſdem, in homagio fidelitate & ligeantia quibus ei tenentur, quod ipſi conſiderent qualis pœna pro tali facto fuerit infligenda. Qui omnes, habito ſuper hoc conſilio, dicunt quod hujuſmodi factum mœretur pœnam amiſionis vitæ*, Whereupon he was committed to the Tower, & *Ro. Archerd*, that attended him into *France*, was committed to priſon, arraigned, & fined at 200 marks. In the end, & aftermuch interceſſion, the L. *Segrave* was pardoned by the King, but could not obtain his liberty, until he had put in ſecurity for his good behaviour.

Placita coram Rege Trin. 33 E. 1.

But this courſe holdeth proportion with an ancient law made by *Lotharius* the Emperor in theſe words, *De his qui diſcordiis & contentionibus ſtudere ſolent, & in pace vivere noluerint, & inde convicti fuerint, ſimiliter volumus, ut per fidejuſſores ad noſtrum Palatium veniant, & ibi cum noſtris fidelibus conſiderabimus quid de talibus hominibus faciendum ſit.*

Ex lege Longi bard. 45. circa annum 850.

A BREIF

ABSTRACT

Of the Queſtion of

PRECEDENCIE

BETWEEN

ENGLAND

AND

SPAINE;

Occaſioned by Sir *Henry Nevill* The Queen of *Englands* Ambaſſador, and the Ambaſſador of *Spain*, at *Calais*, Commiſſioners appointed by the *French* King, who had moved a Treaty of Peace in the 42. year of the ſame QUEEN.

Collected by *Robert Cotton* Eſquire, at the commandment of her Majeſty.

Anno Domini 1651.

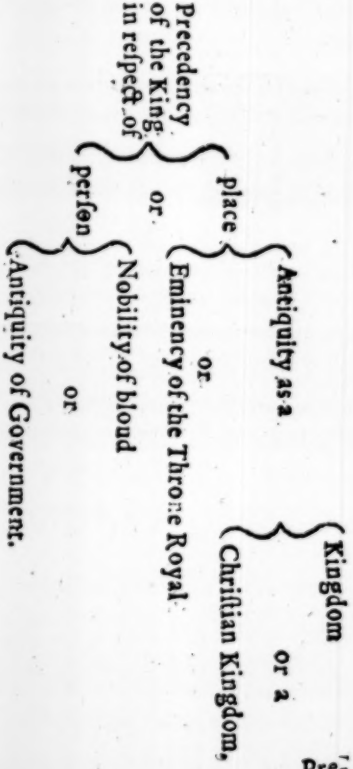
LONDON,

Printed in the Year 1672.

A BRIEF

ABSTRACT

Of the Question of Precedency between *England* and *Spain*, &c.



Precedencie of England *in respect of the Antiquity of the Kingdome.*

TO seek before the decay of the *Roman* Empire the antiquity of any Kingdome is meer vanity, when as the Kingdomes of Christendome, now in being, had their rising from the fall thereof; at which instant *Vortigern* a Native of this Isle, first established here a free Kingdom four hundred and fifty years after Christ, and so left it to the *Saxons*, from whom her Majesty is in discent Lineal; and it is plain, that as we were later then *Spain* reduced under the *Roman* yoak, so we were sooner infreed.

Subsequence of Spain.

Spain since the dissolution of the *Roman* Empire entituled no King, till of late, for *Attalaricus* from whom they would, upon slender warrant, ground their dissent, was never stiled *Rex Hispaniæ*, but *Gothorum*, and the Kingdom of *Castile*,

Caſtile, wherein the main and faireſt antiquity of *Spain* reſted, begun not before the year of Chriſt 1017. whereas they were but Earls of *Caſtile* before; ſo that the Kingdome of the *Engliſh* began (which was alwayes as *Beda* obſerveth a Monarch in a *Heptarchie*) 460. years at the leaſt before the Kingdom of *Caſtile* or *Spain*. *Rodericus Sanctius.* pag. 312. *Beda.*

Precedency of England *in reſpect of Antiquity of Chriſtian Religion.*

JOSEPH of *Aramathea* planted Chriſtian Religion immediately after the paſſion of Chriſt, in this Realm. *Baronius.*

And *Ariſtobulus* one of them mentioned by Saint *Paul*, *Romans* 6. was *Epiſc. Brittanorum*, and likewiſe *Simon Zelotes*. *Dorotheus.*

The firſt Chriſtian King in *Europe* was *Lucius Surius*. *Beda.*

The firſt that ever advanced the papacy of *Rome*, was the Emperour *Conſtantinus* born at *Tarke*. Of whom in the *Roman* Laws near his time is written *Qui veneranda Chriſtianorum fide Romanum munivit imperium*; And to him peculiarly more than to other Emperours are theſe Epithitons attributed, *Divus Divæ memoriæ*, *divinæ memoriæ orbis Liberator*, *quietis fundator*, *Reipublic. inſtaurator*, *publicæ* *Baronius & Donaco Conſtantini.* *In inſcriptionibus antiquis.*

publicæ libertatis auctor, Magnus Maximus, Invictus; Restitutor urbis Romæ, atque orbis.

Fasciculus temporis. And there have been more Kings and Princes of the bloud Royall, Confessors and Martyrs in *England*, than in any one Province in *Europe*.

And from *Ethelbert* King of *Kent*, (Converted *Anno* 596) untill this day, Christianity hath been without interruption continued.

Subsequence of Spain.

In the time of *Clandius*, Saint *James* preached in *Spain*; but gained only nine *Tarapha.* Souls. So did he in *Ireland* as *Vincentius* saith; and they cannot count Christian religion to be then planted in *Spain*, which shortly after was first tainted with the heresie of *Priscilian*, then with *Gothish* Arianism, and after defaced with *Moorish* Mahumetism from 707 years after *Tarapha.* Christ, in continuance 770 years, untill *Ferdinando*, King of *Arragon* and *Castilia* utterly expelled the *Moors*.

Precedency of England *in respect of the more absolute Authority Politicall.*

THe Queen of *Englands* power absolute in acknowledging no superior, not

nor in vaſſallage to Pope or Emperour. For that ſubjection which by King *John* was made to *Innocentius* the third, after in Parliament, *Per præceptum Domini Papa ſeptimo Julii, Cum fidelitate & homagio relaxatur omnino.* *Eulogium lib. 5*

Sir *Thomas Moore* in his debellation, ſaith, the Church of *Rome* can ſhew no ſuch deed of ſubjection, neither that the King could grant it of himſelf. And *Engubinus* in his defence of *Conſtantines* donation, nameth not *England*, where he recited all the fœdary Kingdomes of the *Papacy*; the *Peter-pence* were not duties but *Eleemoſina Regis*, neither the *Rome-Scot*, but *Regis larga benignitas: Parem non habet Rex Anglia in Regno ſuo; multo fortius nec ſuperiorem habere debet* ſaith *Bracton*. *Ex legibus Sancti Edwardi.* *Ex legibus Canuti.*

Ipſe non debet eſſe ſub homine, ſed ſub Deo, & habet tantum ſuperiorem Judicem Deum: Likewiſe in appointing Magiſtrates, pardoning Life, Appeal, granting privileges, taking homage; and his *Jura Majeſtatis* not limited in *cenſu nummorum, Bello judicando, Pace ineunda.* *Bracton.*

Eleutherius the Pope 1400 years ago, in his Epiſtle to *Lucius* King of *Britain*, ſtiled him *Vicarius Dei in Regno ſuo*; ſo is the King of *England* in *Edgars* Lawes; and *Baldus* the Lawyer ſaith, *Rex Angliæ eſt Monarcha in regno ſuo*; and *Malmeſbury*, *Poſt converſionem ad fidem tot & tantas* *Baldus.* *Malmſbury.*

tantas obtinuit Libertates quot imperator imperia.

Subsequence of Spain.

The King of *Spain* hath no Kingdom, but is fœdory either to *France* or *Castila*, enthralled by oath of subjection and vassallage, from King *Henry*, to *Charles* the fifth of *France* 1369. *Ex fœdere contratto*: And for the *Netherlands*, there is homage due to the *French* King, or the *Papacy*, as *Arragon* to *Innocentius* the third, by King *Peter* 1204. confirmed by *Ferdinand* and *Alphonsus* 1445. and from *James*, by the like oath, 1453.

And to *Sardinia* and *Corsica* the King of *Arragon*, from the Bishops of *Rome*, were under oath of subjection invested: *Ex formula fiduciæ.*

The Kingdom of *Portugall* in vassallage to the Pope under an Annuall Tribute.

And the *Canaries*, *Hesperides*, and *Gorgon* Islands subjected to the See of *Rome*, under the chief Rent of four hundred *Florins*, by *Lewis* King of *Spain*, 1043.

Ex Eugubino. Of both the *Indies Alexander* did reserve the regalities of *Sicilia*, the Church is chief Lord.

And *Granado* and *Navarre* were made fœdary to the Pope, under *Julius* the second.

Naples

Naples at every change ſendeth a *Palfrey*, as a *Heriot*, due to the Church of *Rome*, and of the Empire he holdeth the Dukedom of *Millaine*.

So that it is queſtionable among *Civilians*: whether he be *Princeps* which holdeth in *feodo* all of others.

His abſolute authority reſtrained in *Arragon*, by *Juſtitia Arragonica*. In *Biſcay* and other places, by particular reſervations. And his *Jura Majeſtatis in Cenſu Nummorum, Bello judicando, Pace ineunda &c.* Limited by the priviledges of the State, as at *Brabant* and elſewhere in his *Spaniſh* Territories; *Ex propriis conſtitutionibus & privilegiis.*

Precedency of England *in reſpect of more abſolute authority Eccleſiaſtical.*

HEr Majeſties power more abſolute in this (confirmed by ancient Cuſtome and privilege) than any other Chriſtian Prince. For no *Legat de Latere* in *England, de jure* allowed, but the Archbiſhop of *Canterbury*. *Ex Ranolpho Nigro.*

If any admitted by courteſie, he hath no Authority to hold plea in the Realm, contrary to the the Laws thereof: *Placita 2 Hen. 4.* and before he was admitted and entered the Realm, he was to take oath, to do nothing derogatory to the

King and his Crown. *Placitæ Anno primo Henri 7.* No man might denounce the Popes excommunication, nor obey his authority on pain to forfeit all his goods, without assent of the King or his Counsel. *Placita* 23 and 34 *Edw. Rot. Dunelm.*

Malmsbury. *Henry* the First called a Provincial Councel, so did *Canutus* and others.

No appeal to *Rome* without the Kings licence: *Anno* 32 & 34 *Edw.* 1. Inventure of Bishops and Churchmen, in the Kings hand. *Ex Matt. Paris & Hen. Huntington.*

De gestis Pontific. Donelm Placita. 32 *Edw.* 1. and in the 32 *Edw.* 3. Where the reason of the Kings Ecclesiastical authority, to suspend or bestow Church livings is yielded, *Quia reges Angliæ unguntur in Capite.*

Subsequence of Spain.

The King of *Spain* can prescribe no custome to prohibit the Popes Legat, nor useth any Authority Penall over the Clergy; *Spain* can produce no Example of any Provincial Councel by call of the King. For *Bodin lib.* 1. *cap.* 6. towards the end writeth, that the Kings of *Spain*, *Non sine magna mercede impetraverunt Sixti Pontificis Romani rescripto ne perigrinis sacerdotia tribuerentur.*

Appeals

Appeals from the King to *Rome* allowed. So the Kings of *Spain*, have meerly no power Eccleſiaſtical, having diſpoyled himſelf of all, by inthralling their Kingdom to the Church of *Rome*.

Precedency of England, *in reſpect of Eminency of Royall Dignity.*

THe Kings of *England* are anointed as the Kings of *France*, who only have their preheminence before other Kingdoms declared by miracle, in the cure of the *Regius morbus*, which they can effect only; and that of antiquity: For *Edward* the Confeſſor healed many. *Ex libro Bernwellenſis Cœnobiæ.*

2. They are ſuperiour Lords of the Kingdome of *Scotland* and *Man*, and *Vicarii Imperii*; as *Edward* the third and *Oſwald* intituled *Rex Chriſtianiſſimus*: *ve. Peda lib.* 2.

3. They are named *Filii adoptivi Eccleſiæ*, as the Emperour *Filius Primogenitus*, and the King of *France*, *Filius natu minor*: *vide Platina.* *Platina.*

4. They are accompted among *Reges ſuper illuſtres*, in this order: *Imperator*, *Rex Franciæ*, *Rex Angliæ & Franciæ*, *vide Corſettus.* *Corſettus.*

5. *England* in the General Councels at *Conſtance* and *Piſa*, was made a Nation,

Ex lib. Sacrarum Ceremoniar.

when as all Christianity was divided into four Nations, *Italicam, Gallicam, Germanicam, & Anglicam. Ex lib. sacrarum Ceremoniarum Ecclesiæ Romanæ.*

6. Whereupon seat accordingly was allowed at the three General Councels, *viz. Constance, Pisa, Sienna,* to the *English* Ambassadors next to the Emperour on the left hand, and to the King of *France* on the right hand: which were their Ancient seats before the *Spaniards* at *Basill* 1431. begun to contend for Precedency.

Where it was in the first Session ordered, that all Legats should hold such their places, as they had enjoyed heretofore, according to their worth and antiquity: Yet in the Councel of *Trent* the precedency of *France* with *Spain* was made questionable.

Augustus de Cavalles, as the strongest reason to bar the *French* Interest, inferred the Queen of *England* from her Ancestors, both in respect of Inheritance, Conquest, and Gift, *de jure* Queen of *France*. By which reason when he doth shake or overthrow (as he thinketh) the Precedency of *France*, he doth consequently strengthen the Precedency of *England*.

And in Treaty between *Henry* the seventh, and *Philip* of *Castile*, 1506 the Commissioners of *England* did subsign before the other, And in the Treaty of Marriage

Marriage with Queen *Mary*, *Anno* 1553 thoſe of *England* are firſt rehearſed. And at *Burbrough Anno* 1588. they gave it to her Majeſties Ambaſſadors.

And yet in reſpect of the Eminency of this Royal throne, to the See of *Canterbury* was granted by *Urbane*, at the Councel of *Claremount*, *Anno* 1096. for ever, the ſeat in General Counceil, at the Popes right foot, who at that time uttered theſe words; *Ineludamus hunc in orbe noſtro tanquam alterius orbis Pontificem Maximum.*

Subſequence of Spain.

1. The Kings of *Caſtile* are never anointed, neither hath the *Spaniſh* Throne that vertue to endow the King therein inveſted, with the power to heal the Kings evil: For into *France* do yearly come multitudes of *Spaniards* to be healed thereof.

2. No Kingdom held in fee of him.

3. *Spain* then not remembred one of the Sons of the Church.

4. The King of *Spain* placed laſt after the King of *England*, *inter ſuper illuſtres*, by the ſaid *Corſettus.*

5. The Kingdome was then compriſed under *Italica natio*, and no Nation of it ſelf, as in old it was called *Iberia minor*, as a member of *Italy*, *Iberia major.* *Virgilius.*

Cosmographia. *England* being *Britannia major.*

Gatsius. At which time the *Spaniard* contented himself with the place next to the *King* of *France.*

Precedency of England *before* Spain, *in respect of the Nobility of Blood.*

HEr Majesty in Lineal discent is deduced from Christian Princes for 800 years, by *Ethelbert* a Christian 596. and the Matches of her progenitors most Royal with *France, Germany, Spain.*

Subsequence of Spain.

For their Antiquity of discent as *vide Crapha.* Kings of *Spain* is chiefly from the Earls of *Castilia* about 500 years since.

For they cannot warrant their discent, from *Atalaricus* the *Goth*, and as Dukes of *Austria* from the Earls of *Hapsburgh* only about 390 years since.

Their matches anciently for the most part with their subjects, and of late in their own blood.

Precedency of England, *in respect of antiquity of Government.*

HEr Majesty having raigned now most happily 42 years.

This

This we would not have alledged, but that the *Spaniſh* Ambaſſador at *Baſil*, objected in this reſpect the minority of *Henry* the ſixth.

Her ſex herein nothing prejudicial, when as both divine and humane Laws do allow it, and accordingly *Spain*, *England*, and *Hungary*, inſomuch, that *Mary* Queen of the laſt, was always ſtiled, *Rex Mario Hungariæ*. *Vide Tilius.* *Tilius.*

Subſequence of Spain.

The King of *Spain* yet in the Infancy of his Kingdome.

For the Precedency may be alledged, viz.

The Antiquity of the Kingdom, when as *Caſtile*, *Arragon*, *Navar* and *Portugnall*, had their firſt Kings about 1025. *Anno Chriſti* 1025.

The ancient receiving of the Chriſtian Faith, by *Joſeph* of *Aramathea*, *Simon Zelotes*, *Ariſtobulus*, yea by St. *Peter*, and St. *Paul*, as *Theodoretus*, and *Sophrinius* do teſtifie.

The Kingdome is held of God alone, acknowledging no ſuperiour, and in no vaſſalage to the Emperour or Pope, as *Naples*, *Sicilia*, *Arragon*, *Sardinia*, and *Corſica*, &c.

Sir *Thomas Moore* denyeth, that King *John*, either did, or could make *England* ſubject to the Pope, and that the Tribute was not paid (pag. 296.) but the *Preter-*

pence, were paid to the Pope, by *K. John*, by way of Alms.

The absolute power of the King of *England*, which in other Kingdomes is much restrained.

1415. *England* is accompted the fourth part of Christendome; For in the Councel of *Constance* all Christianity was divided, in *nationem*, viz. *Italicam*, *Germanicam*, *Gallicanam & Anglicanam*, and accordingly gave voices.

England in the opinions of the Popes is preferred, because in it is conteined in the Ecclesiastical division, two large Provinces, which had their several *Legati nati* when as *France* had scantly one.

Anno Christi. The Emperour is accompted *major filius Papæ*, the King of *France filius minor*, the King of *England*, *filius adoptivus*.

The Archbishops of *Canterbury*, are accompted by the people, *tanquam alterius orbis Papæ*, and anointed to have place in General Councels, at the Popes right foot.

The title of *Defensor fidei*, as honourably, and as justly bestowed upon the Kings of *England*, as *Christianissimus* upon the *French*; or *Catholicus* upon the *Spaniard*.

1338. *Edward* the third, King of *England*, was created by the Emperour, *Vicarius Perpetuus Imperii*; *cum jure vitæ necisque in omnes Imperii subditos*, and the Kings of

1065. *England*, *Papæ Vicarii*, by Pope *Nicho-*

las

las the ſecond, *vide* COPGRAVE.

Innocentius the fourth, the Pope ſaid, *vere hortus deliciarum eſt Anglia, vere puteus inexhauſtus ubi multa abundant, &c.* 1246.

King *Hen.* 2. elected King of *Jeruſalem* by the Chriſtians. 1185.

Richard the firſt conquered the Kingdome of *Cyprus*, and gave it unto *Guy Luſignian*, whoſe poſterity raigned there until of late years. 1191.

Kings of *England* are ſuperiour Lords of the Kingdom of *Scotland*, and are abſolute Kings of all the Kingdom of *Ireland*.

England is not ſubject to Imperial and Roman Laws, as other Kingdoms are, but retaineth her ancient Laws, and *Pura municipialia*.

King *Henry* the ſixth was Crowned King of *France* at *Paris*.

The Kings of *England* did uſe the ſtile of a Soveraign, viz. *Alti conantis Dei, Largiſtua, Clementia qui eſt Rex Regum & Dominus Dominorum.*

Ego Edgarus anglorum βασιλ. Omniumque Regum Inſularumque Oceani Britanici Circumjacentium, cunctarumque Nationum quæ infra eam includuntur, Imperator ac Dominus.

A REMONSTRANCE OF THE TREATIES OF AMITY AND MARRIAGE

Before time, and of late, of the Houſe of *AUSTRIA* and *SPAIN*, with the Kings of *England*, to advance themſelves to the Monarchy of *Europe*.

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,
Printed in the Year 1672.

A REMONSTRANCE OF THE TREATIES OF AMITY AND MARRIAGE

Before time, and of late of the Houſe of *AUSTRIA* and *SPAIN*, &c.

Moſt Excellent Majeſty,

WE your Lords Spiritual and Temporal and the Commons of your Realm Aſſembled in this your Parliament, having received out of your meer grace, your Royal command, to declare unto your Highneſs our advice and Counſel, for the further continuing, or final breaking of the two Treaties between your Majeſty, the Emperor, and the *Spaniſh* King touching the rendition of the Palatinate, to the due and former obedience of your Illuſtrious Son the Prince Palatine; and that of

of Marriage, between the Lady *Mary* Infant of *Spain*, and the moſt excellent Prince your Son, now Prince of *Wales*; We conceive it not unfit to offer up to your admired wiſdom and conſideration theſe important Motives that induced our ſubſequent advice and reſolution.

By contemplation whereof, we aſſume to our ſelves that your Majeſty apparently ſeeing the infinite Calamity fallen of late unto the Chriſtian world, by means of theſe diſguiſed Treaties of Amity, and Marriage before time, frequently uſed with your progenitors, and now lately with your ſelf by the Houſe of *Auſtria*, and *Spain*; to advance themſelves to the Monarchy of *Europe*, will graciouſly be pleaſed to accept our humble advice.

1503. *Maximilian* the Emperor, and *Ferdinand* of *Spain* uniting by marriage the poſſeſſions of the Houſe of *Auſtria*, the *Netherlands*, *Arragon*, *Caſtile*, *Sciciliæ*, and their new diſcoveries, to one ſucceeding heir, began (though a far off) to ſee a way whereby their Grandchild *Charls*, might become the Maſter of the Weſtern world, and therefore each endeavoured by addition of Territories, to facilitate that their deſired end.

France was the only obſtacle, whoſe ambition and power then was no leſs than

than theirs; he lay in their way for *Gelders*, by siding with Duke *Charls*; for *Navarre*, by protecting *Albert* their King, for their peeces in *Italy*, by confederation with the State of *Venice*; and for *Naples* and *Millain* by pretence of his own. They were too weak to work out their way by force, and therefore used that other of craft.

Lewis is offered for his daughter *Claude* the Marriage of *Charls* their Grandchild, it is at *Bleys* accepted, and to them confirmed by oath: the claim of *France* to *Naples* by this released one hundred thousand Crowns yearly, by way of recognition only to *France* reserved, who is besides to have the investure of *Millain* for a sum of money, which the Cardinal *D'amboyes*, according to his Masters Covenant, saw discharged.

Ferdinand thus possessed of what he then desired, and *Maximilian* not meaning to strengthen *France* by addition of that Dutchy or repayment of the money, broke off that Treaty to which they were mutually sworn, affiancing *Charls* their Heir to *Mary* the Daughter of *Henry* the 7th; to whose son *Arthur*, *Ferdinand* had married *Katharine* his youngest daughter. 1056.

This double knot with *England*, made them more bold (as you see they did) to double with France: but the Prince

of

of *Wales* his untimely death, and his fathers that ſhortly followed, enforced them to ſeek out, as they did, another tye, the Spirit and power of *Lewis*, and their provocations juſtly moving it: they make up a ſecond Marriage for *Katharine* with *Henry* the eighth, Son of *Henry* the ſeventh; and are enforced to
1510. make a Bull dated a day after the Popes death to diſpence with it; and conſummate *per verba de præſenti*, by Commiſſioners at *Callis*, the former Nuptuals of *Charles* and *Mary*, publiſhing a Book in print of the benefit that ſhould accrew to the Chriſtian world by that Alliance.

Henry the eighth left by his father young and rich, is put on by *Ferdinand* to begin his right to *France* by the way
1512. of *Guyen*; and to ſend his forces into *Spain*, as he did, under the Marqueſs *Dorſet*, to joyn with his Father in Law for that deſign, by reputation whereof *Albert* of *Navarre* was enforced to quit that State to *Spain*; who intended as it proved, no further uſe of the *Engliſh* Army than to keep off the *French* King from aſſiſting *Albert*, until he had poſſeſſed himſelf of that part of *Navarre*, which his ſucceſſors ever ſince retain. For, that work ended, the *Engliſh* Forces were returned home in Winter, nothing having advanced their Maſters ſervice.

The

The next year to assure *Henry* the eighth, grown diffident by the last carriage of *Maximilian* and *Ferdinand*, whose only meaning was to lie busying of the *French* King at home, to make an easie way abroad to their former ends, project to the *English* King an enterprise for *France*, to which they assured their assistance, by mutuall confederacy at *Mecklin*; for which *Bernard de Mesa*, and *Lewis de Carror*, for *Castile* and *Arragon*, and the Emperor in person gave oath, who undertook, as he did, to accompany *Henry* the eighth to *Turwyn*. 1513

Ferdinand in the mean time dispatching the Vice-roy of *Naples* into *Italy*, to busie the *French* King and *Venetian*, that the *English* King with facility might pursue the conquest of *France*.

Henry the eighth had no sooner distressed the *French* King, but *Ferdinand*, respecting more his profit than his faith, closed with *Lewis*, who renounced the protection of *Navarre* and *Gelders*, so hee and *Maximilian* would forsake the tye they had made with *Henry* the eighth.

The Vice-Roy of *Naples* is instantly recalled from *Bressa*; a truce with *Spain* and *France* concluded; *Quintean* sent to the Emperor to joyn in it; *Don John de Manuel*, and *Diego de Castro* imployed to work the Emperor, and *Charles* the Grandchild to exchange the marriage of 1514

Mary, *Henry* the eighths Siſter, with *Reve* the ſecond daughter of the *French* King: and *Lewis* himſelf to take *Elanor* their Neece to wife: and to clear all diſpute about the conditions, a blanck is ſent from *Spain* to the *French* King to over-write what he pleaſe.

Henry the eighth perceiving this cloſe and foul play, entertaineth an overture made by the Duke *de Longavil* then priſoner in *England*, for a Marriage of *Mary* his Siſter with the *French* King, which effected, the two ſubtile Princes failed of their ends.

1515 *Lewis* dead, and *Francis* ſucceeding, he made his firſt entrance a league with *England*, the recovery of *Millane* which he did, the protection of his neighbours, and reduction of the *Swiſſes* from the Imperial ſide, for which he imployed to them the baſtard of *Savoy*.

Maximilian and *Ferdinand* ſeeing by this all their new purchaſes in danger, and that they had now no diſguiſed marriage again to entertain the credulity of *Henry* the eighth, they work upon his youth and honour. The Emperor will needs to him reſign his Emperial Crown; as wearied with the weight of Government and diſtraction of *Europe*, which needed a more active man then his old age, to defend the Liberty of Subjects, and Majeſty of Princes from the Tyranny of *France*.

That

That he had made the way already for him with the Electors; that he would send the Cardinall *Sedunensis*, with ample commission into *England* to conclude the resignation, which was done. That at *Aquisgrave* he will meet *Henry* the eighth, and there give up his first Crown, from thence accompany him to *Rome*, where he should receive the last right of the Imperiall dignity, putting *Verona* into his protection, then assailed by the *Venetians*; and giving him the investiture of *Millane* in *feodo, more Imperiali*, then in possession of the *French*, to tye his aid the faster against these States.

Hereupon *Henry* the eighth concluded a defensive league with the Bishop of *Mesa* and Count *Daciana*, authorised Commissioners from the Emperor, *Arragon, Castile*, and sendeth his Secretary Master *Pace* with money, for *Maximilian* had already borrowed and broken to entertain the *Swissers* into pay and confederacy against *France*. 1516

Charles the Grandchild must feign a difficulty to sway his League, untill the Emperor at *Henry* the eighths cost, was fetched from *Germany* to the *Netherlands* to work his Nephew to it, who in the interim had closely contracted a peace by the Grandfathers consent with *France*. No sooner had *Maximilian* received ten thousand *Florins* of the *English* King to bear his charge, but the

Treaty of *Noyon*, was cloſely between him; *Arragon* and *Caſtile* concluded, whereby the ten thouſand Crowns for recognition of *Naples* was paſſed from *France* to the Emperor, and *Charles* himſelf affianced to *Loyſia* the *French* Kings daughter, and alſo darkly carried, that when Maſter *Pace* at *Agno* came down from the Emperor with his Signature of the confederacy, the *French* Kings Ambaſſador went up the back Stairs, with ſix thouſand Florins, and the tranſaction of the Penſion of *Naples* to *Maximilian*, and there received his confirmation of the Treaty at *Noyon*; notwithſtanding the ſame day the Emperor looking upon his George and Garter, wiſhed to *Wingfield*, *Henry* the eighths Ambaſſador, that the thoughts of his heart were tranſparent to his Maſter.

So diſpleaſing was this foul play to the Cardinall *Sedunenſis*, the Emperors chief Counſellor, that he writ *contra perfidiam Principum*, againſt the falſhood of his own Lord, a bitter Letter to the *Engliſh* King; who finding again how his youth and facility was overwrought by theſe two old and ſubtill Princes, his vaſt expences loſt, his hopes of *France* leſned, and that of the Emperor vaniſhed (for
1518 *Maximilian* is now conferring the Title of *Rex Romanorum* to one of his Nephues) concludeth, by mediation of the Admiral of *France*, a peace with that King;

a mar-

a marriage for the *Dolphin Francis* with the Lady *Mary*, and the re-delivery of *Tournay*, for a large Summe of Money.

Not long after *Maximilian* dieth, leaving the Imperial Crown in Competition of *France* and *Castile*. *Charles*, whose desire was, as his Ancestors, to weave that vvreath for ever into the *Austrian* Family, began to fear the power of his corrivall, vvith vvhom the Pope then sided, and the *English* King stood assured by the late marriage of their two Children. To draw off the Pope he knew it vvas impossible, he vvas all *French*. To vvork in *Henry* the eighth, he found the inconstancy of his predecessors, and the new match to lie in the vvay. To clear the one, he is fain, in his Letters into *England*, to load his two Grandfathers vvith all the former aspertions, his years, and duty, then tying him more to obedience then truth: but that he vvas a man, and himself now; that mutuall danger vvould give assurance, vvhere otherwise single faith might be mistrusted; *France* vvas in it self, by addition of *Britany*, more potent than ever, this man had rejoyned to it some important pieces in *Italy*, and should his greatnes grow larger up by accession of the Imperiall Crown, how ealie vvere it to effect indeed what he had fashioned in Fancy, the Monarchy of *Europe*. As for the young 1519

Lady, who was like to loſe her husband if *Henry* the eighth incline to this Counſell, and aſſiſt *Caſtile* in purſute of the Emperor; he was contented (for *Loiſia* of *France*, eſpouſed to him by the Treaty at *Noyon*, was now dead) to make up the loſs of the Lady *Mary* by his own Marriage with her; a match fitter in years, for the *Dolphin* was an infant, as great in dignity; for he was a King, and might by the aſſiſtance of her father be greater in being Emperor.

1519 Thus was *Henry* the eighth by fears and hopes turned about again, and *Pacy* forthwith ſent to the Electors with inſtructions & money, who ſo wrought that *Charles* was in *July* choſen Emperor: and that it was by the ſole work of *Henry* the eighth, himſelf by Letters under his hand acknowledged. From *Aquiſgrave*, he commeth Crowned the next

1522 year for *England*, weddeth at *Winſor* the Lady *Mary*; concludeth by league the invaſion of *France*, and to divide it with *Henry* the eighth by the River of *Rodon*, making oath at the high Altar at *Pauls* for performance of both thoſe Treaties.

Hereupon *France* is entred by the *Engliſh* army, and *Burbon* wrought from his Allegiance by a diſguiſed promiſe of this Emperor of *Elianor* his Siſter for wife, to raiſe forces againſt his Maſter, which he did, but was paid by the *Engliſh* King.

The

The *French* King to carry the wars from his own doors, maketh towards *Milan*; whereby *Burbon* and his forces were drawn out of *Province* to guard the Imperialls in *Italy*. 1524 1525

At *Pavie* they met, and the *French* King was taken prisoner, and forthwith transported into *Spain*; where at *Madrid* the Emperor forced his consent to that Treaty, whereby he gained *Burgundy*, and many portions in the *Netherlands*; leaving *Henry* the eighth who had born the greatest charge of all that Warre, not only there unsaved, but calling a Parliament at *Toledo*, taketh by assignment of his States, *Isabella* of *Portugall* to wife, procuring from Pope *Clement* a Bull to absolve him of his former oaths and Marriage, working not long after by *Ferdinandus* his Chaplain, the Earl of *Desmond* to Rebell in *Ireland*, and *James* the fifth of *Scotland*, by promise of Marriage with his Neece the daughter of *Denmarke*; to whom he likewise sent Munition, and money, to busie *Henry* the eighth at home, that he might be the less able to requite these indignities he had so done him. And to shew that his ambition was more than his piety, he Ordered by instructions, first the Duke of *Burbon*, and after *Hugo de Monsada* to surprise *Rome* and the Pope; sending *Angelo* an observant Frier thither, whom he had assigned to 1526

the Papall Throne, intending to reduce the choiſe of the See from the Cardinals again, to the Empire, and there to ſet up a firſt Monarchy.

But his deſign by a needfull confederacy, as now of the Pope, *Frenſh* King, Princes of *Italy* and others, vvith *Henry* the eighth, vvho vvas made *Caput fœderis*, vvas to the ſafety of all Chriſtian Princes, prevented happily, and he himſelf reforced at *Cambray* in the year one thouſand five hundred twenty and nine,
1529 to re-deliver the *French* King, and many pieces of that Crown he had vvreſted avvay by the Treaty of *Madrid*, and to ſit dovvn vvith moderate and fair conditions againſt his vvill.

His vvaking Ambition vvould not long let him reſt, but again he plotteth to break the knot betvveen the *French* and *Engliſh* Kings.

To vvork this, he aſſureth, by contract, his aſſiſtance in furtherance of *Henry* the eighths Title to *France*; and to make the greater belief, offereth a marriage to the Lady *Mary*, ſo ſhe might be declared again Legitimate.

Henry the eighth accordeth vvith him, and advanceth his Army into *France*, vvhere he had no ſooner recovered *Bulleyn*, but the Emperor catching advantage on the *French* Kings neceſſities, falleth off from his former faith and promiſe, making up a peace perpetuall vvith

France,

France, vvhereby all claim from the Crovvn of *Arragon*, *Naples*, *Flanders*, *Arras*, *Gelders*, and other parts vvas releaſed, and mutuall confederation for reſtitution of the Catholick Religion concluded betvvixt them both. 14 Septemb. 1545

Edward the ſixth ſucceeding his Father forbears all Treaties vvith *Spain*, but thoſe of intercourſe, perſiſting as formerly in union vvith the Princes of *Germany*, and his other Allies, preventing thoſe expences and dangers, vvhich his Fathers belief and confidence of *Spain* had taſted of before.

His Siſter and Succeſſor *Mary*, entertaining that fatall Amity vvith the Emperour and his ſonne, by Marriage, embarqued her Eſtate in a dangerous vvarre, vvhereby the Realm vvas much impoveriſhed, and *Callice* loſt. 1558

Her Siſter of happy memory ſucceeding made up that breach, by that three-fold Treaty at *Cambray*, 1558. Where King *Philip* as bound in honour, ſtood bound for aid in Recovery of *Calice*; But his ovvn ends by that Convocation ſerved, he left her after to vvork out her ſafety her ſelf alone; yet fearing that a Union of *France* and your Realms, in the perſon of your moſt vertuous Mother, then married into *France*, he under a feigned pretence of Marriage, vvrought, by *Caraffa*,

fa, and his Faction of other Cardinalls, a stay of the Popes Declaration against the Queen of *England*, more his own fears, than his love procuring it.

Yet the Princely disposition of this Noble Lady, taking those pretences for reall favours, was not wanting both with her Counsell and Purse; for she imployed many of her ablest Ministers to mediate, and disbursed upon the assurance of *Brabant*, and the good Towns of *Flanders*
1578 whose bonds are yet extant, for reduction of those Provinces to his obedience,
150000 li. one hundred and fifty thousand pounds.

But when she found his aim to be the violating of their ancient liberties, and in it saw her own danger involved; her Counsell advised her, not to leave the assistance of those People, *France*, and those other Princes that lay as her self in danger, to be swallowed up in his ambitious ends, who, when he intended the Conquest of her Estate, to blind her
[1587 with security, presented by *Carolo Lanfranco*, and the Prince of *Parma*, a Proposition of Peace; graced with as many Arguments of honest meaning, as his Progenitors had used to her Father, which she accepted, but not without a prudent suspition. For when the Treaty was in height, he brought his invincible Navy to invade the Realm, the success whereof was answerable to his Faith and Honor. She left not that injury without Revenge,

venge, but forced him in his after Raign, to that extremity, that he was driven to break all faith with those Princes that trusted him; and paid for one years Interest, about twenty five thousand Millions of Crowns. 1597 25000 *Mill. of Crowns.*

So lovv and desperate in Fortunes your Highness found him, when to all our comforts you took this Crown; Then from the abundant goodness of your peaceable Nature, you were pleased to begin your happy Raign with general quiet, and with *Spain* the first, which should have wrought in noble Natures a more gratefull Recompence than after followed: For long it was not before *Tyrone* was heartned to rebell against your Highness, and flying, had pension at *Rome*, paid him from the *Spanish* Agent. His son *Odonell Tirconell*, and others your chiefest Rebells, retained ever since in Grace and Pay with the Arch-dutchess, at *Spains* devotion. *King James*, 1603 1604 1606 1612

As soon as your eldest Son of holy memory now with God, was fit for marriage, they began these old disguises, by which before they had thriven so well, *&c.*

Twenty

Twenty Four

ARGUMENTS,

Whether it be more expedient to suppress

POPISH PRACTISES

Against the due

ALLEGEANCE

OF HIS

MAJESTY.

By the Strict Executions touching *Jesuits* and *Seminary* Priests?

OR,

To restrain them to Close Prisons, during life, if no Reformation follow?

Written by Sir *Robert Cotton*, Knight and Baronet.

LONDON,

Printed in the Year 1672.

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I Am not ignorant, that this latter age hath brought forth a ſwarm of buſie heads, which meaſure the great Myſteries of State, by the rule of their ſelf-conceited wiſdomes; but if they would conſider, that the Commonwealth, governed by grave Counſellors, is like unto a Ship directed by

by a skilfull Pilot, vvhom the neceſſities of occaſions, and grounds of reaſon, vvhy he ſteereth to this, or that point of the Compaſs, are better knovvn, then to thoſe that ſtand a loof off, they vvould perhaps be more ſparing, if not more vvary in their reſolutions. For my ovvn particular I muſt confeſs, that I am naturally too much inclined to his opinion, vvho once ſaid, *Qui bene latuit, bene vixit*, and freſhly calling to mind the ſaying of *Functius* to his Friend, at the hour of his untimely death, *Diſce meo exemplo mandato munere fungi: Et fuge ſeu peſtem———*

I could eaſily forbeare to make my hand-vvriting the Record of my opinion, vvhich nevertheleſs I proteſt to maintain rather deliberatively, than by the vvay of a concluſive aſſertion; therefore vvithout vvaſting precious time any longer vvith needleſs Prologues, I vvill briefly ſet dovvn the queſtion in the terms follovving, *viz.*

Whether it be more expedient to ſuppreſs Popiſh Practiſes, againſt the due Allegiance to his Majeſty, by the ſtrict Execution touching Jeſuits and Seminary Prieſts: Or to re-ſtrain them to cloſe Priſons, during life, if no Reformation follow.

It

In favour of the first Division.

I.

THere are not few, who grounding themselves on an Antient Proverb, *A dead man bites not*, affirm, that such are dangerous to be preserved alive, who being guilty, condemned, and full of fear, are likely for purchase of Life and Liberty, to inlarge their uttermost in desperate adventures, against their King and Countrey.

Mercy forerunning the rapine of a malefactor, is an ill Guardian of a Princes Person.

II.

No less is it to be feared, that while the sword of Justice is remiss, in cutting off heinous offendors against the Dignity of the Crown, the mis-led Papall multitude, in the interim, may enter into a jealous suspence, Whether that forbearance proceed from fear of exasperating their desperate humours, or that it is now become questionable, Whether the execution of their Priests, be simply for matter of State, or pretended quarrel for Religion.

A hard hand, suddenly remitted, is seldom by the rude people interpreted in the best sense.

III.

And whereas in a remedilesse inconvenience, it is lawful to use the extremity of Laws against some few, that many by the terrour of the example, may be reformed; what hope can there be that Clemency may tame their hearts, who

There is no hope of Reformation where there is no Confession of the fault.

interpret His Majesties grace in transporting their Priests out of His Realm, to be a meer shift to rid the Prisons of those whom Conscience could not condemn of any capital crime.

IV.

While Justice sleeps, the time serves to sow news, and raise Factions.

Neither are their vaunting whisperings to be neglected, by which they seek to confirm the fearful souls of their party, and to inveigle the ignorant, doubtful or discontented persons; for if the glorious extolling of their powerful friends, and the expectance of a golden day, be suffered to win credit with the meaner sort, the relapse cannot be small, or the means easie to reform the error, without a general combustion of the State.

V.

Fearful spirits, by sufferance, grow insolent and cruel.

Let experience speak somewhat in this behalf, which hath evidently descryed, within the Current of few years, that the forbearance of severity, hath multiplied their Roll in such manner, that it remains as a Corrosive to thousands of his Majesties well-affected Subjects.

VI.

Union in a prepared conspiracy prevails more than number.

To what purpose serves it to muster the names of the Protestants, or to vaunt them to be ten for one of the *Roman* Faction? as if bare figures of numeration could prevail against an united party, resolved, and advised before hand, how to turn their faces with assurance, unto all

all dangers, while in the mean time, the Protestants neastling in vain security, suffer the weed to grow up that threatneth their bane and mercileſs ruine.

VII.

Sometime the Oath of Supremacy choaked their presumptuous imaginations; and yet could not that infernal smoke be smothered, nor the Locusts issuing thereout be wholly cleansed from the face of this Land. Now that the temporal power of the King, conteined in the Oath of Allegiance, is by the Papall See, and many of the Adorers thereof, impudently avowed to be unlawful; shall the broachers of such Doctrine be suffered to live, yea and to live and be relieved of us, for whose destruction they groan daily?

It is hard to perswade those who by reason of their dependency on the Pope, are scarce masters of their own Souls.

VIII.

To be a right Popish-Priest, in true *English* sense, is to bear the Character of a disloyal *Renegado* of his natural obedience to his Soveraign, whom if by connivency he shall let slip, or chastise with a light hand, what immunity may not traiterous Delinquents in lesser degrees expect, or challenge, after a sort, in equity and justice?

Malis benè facere, tantumdem est ac bonis male facere.

IX.

If there were no Receivers, there would be no Theeves: Likewise if there were no harbourers of the Jesuits, it is to be presumed, that they would not

Fellowship in misery easeth grief, and by the clamor of a multitude, justice is many times condemned.

trouble this Isle with their presence, therefore rigor must be extended against the Receiver, that the Jesuits may be kept out of dores; were it then indifferent justice, to hang up the Accessary, and let the Principal go free, namely to suffer the Priest to draw his breath at length, whiles the Entertainer of him under his Roof submits his body to the Executioners hands? without doubt if it be fit to forbear the chief, it will be necessary to receive the second offender in to protection, wherewith a mischief must ensue of continual expence, and scandalous restraint of so great a number.

X.

Reputation is one of the principal Arteries of the Common-wealth, which *Maxime*, is so well known to the Secretaries of the Papacy, that by private Forgeries, and publique impressions of Calumniations, they endeavour to wound us in that vital part; howsoever therefore some few of that stamp, being better tempered then their fellows in defence of this present Government, have not spared to affirm that *Tyranny* is unjustly ascribed thereunto, for so much as freedome of Conscience after a sort may be redeemed for money, notwithstanding there want not many Pamphleters of their side, who approbriously cast in our teeths, the converting of the penalty inflicted on Recusants, and refusers of the Oath

It is not good to set price on that which being sold will bring repentance to the seller.

Oath of Allegiance, from the Kings *Exchequor*, to a particular Purſe, ſure we cannot preſume, that thoſe Libellers may be diſwaded from ſpitting out their venome maliciouſly againſt us, when they ſhall ſee their Prieſts mewed up without further proceſs of Law, for either they will attribute this calm dealing to the juſtice of their cauſe, the ſtrength of their party, or patience; or that tract of time hath diſcovered our Laws, importing over much ſharpneſs in good pollicy to be thought fitter for abrogation, by *Non-uſance*, than repealed by a publique decree.

Warineſs is to be uſed with thoſe, Quinec totam ſervitutem pati poſſunt, nec totam Libertatem.

XI.

Moreover it is fore-thought, by ſome, that if theſe Seminaries be only reſtrained, they may prove hereafter like a Snake kept in the boſome, ſuch as *Bonner*, *Gardiner*, and others of the ſame Livery ſhewed themſelves to be, after Liberty obtained in Queen *Maries* time, and if the loſs of thoſe Ghoſtly fathers aggrieve them, it is probable, that they will take arms ſooner, and with more courage, to free the living, then to ſet up a Trophy to the dead.

Moſt men write good Turns in ſand, and the bad in Marble.

XII.

Howſoever, the Jeſuits band is known in their native ſoyl, to be defective in many reſpects, which makes them underlings to the Proteſtants, as in Authority, Arms, and the protection of the Laws,

Fugitives that crave ſuccour uſe to lie much in favour of their cauſe and power.

which is all in all; Nevertheleſs they inſinuate themſelves to forraign Princes, favouring their party, with promiſes of ſtrong aſſiſtance at home, if they may be well backed from abroad; To which purpoſe they have divided the inhabitants of this realm into four ſects, whereof ranking their troupes in the firſt place (as due to the pretended Catholiques) they aſſumed a full fourth part to their property, and of that part again they made a ſubdiviſion into two portions, namely, of thoſe that openly renounced the eſtabliſhed Church of *England*, and others, whoſe certain number could not be aſſigned, becauſe they frequented our ſervice, our ſacraments, reſerving their hearts to the Lord God the Pope: The ſecond party they alot to the Proteſtants, who retain yet (as they ſay) ſome reliques of their Church: The third rank and largeſt was left unto the Puritans, whom they hate deadly, in reſpect they will hold no indifferent quarter with Papiſtry; The fourth and laſt maniple they aſſign to the politicians, *huomoni* (ſay they) *ſenza dio, & ſenza anima*, men without fear of God, or regard of their Souls, who buſying themſelves only in matter of State, retain no ſenſe of Religion. Without doubt, if the Authors of this partition have caſt their accompt aright, we muſt confeſs that the latter brood is to be aſcribed properly unto them;

Relation de Botero.

It is a ſign when a Faction dares number their fide, that there is an opinion conceived of ſufficient ſtrength, to attempt ſome Innovation.

In a Commonwealth there ought to be one head, for which cauſe a Prince muſt be vigilant, when diverſ factions ariſe that by favouring one, and neglecting the other, inſtead of a head of all he become only a member of one Party.

Diſcontented minds in beginning of Tumults will agree, though their ends be diverſ.

them; for if the undermyning of the Parliament houſe, the ſcandalizing of the King in print, who is Gods anointed, and the refuſal of natural obedience, be marks of thoſe, that neither ſtand in awe of God or conſcience, well may the Papiſts boaſt, that they are aſſured of the firſt number, and may preſume likewiſe of the laſt friendſhip, when occaſion ſhall be offered; for the preventing of which combination, it is a ſure way, to cut off the heads that ſhould tie the knot, or at leaſt to brand them with a mark in the forehead before they be diſmiſſed, or (after the opinion of others) to make them unwelcome to the feminine ſex, which now with great fervency imbraceth them.

A multitude is never united in groſs, but in ſome few heads which being taken away, converteth their fury againſt the firſt movers of the Sedition.

Certain Germans *in* Henry *the ſecouds time calling themſelves* Publicans *were marked with a hot Iron in the foreheads and whipped, being thruſt out in the Winter, with a Prohibition that none ſhould receive them into their houſes, they dyed of hunger and cold.*

Theſe are for the moſt part Arguments vented in ordinary Diſcourſe, by many who ſuppoſe a Prieſts breath to be contagious in our Engliſh *air.*

Others there are, who maintain the ſecond part of the Queſtion, with reaſons not unworthy of obſervance.

In favour of the second Division.

I.

Rooted suspition, being violently handled, groweth more wary, but not less obstinate.

DEath is the end of temporal woes; but it may in no wise be accounted the Grave of memory; therefore howsoever it is in the power of Justice to suppress the Person of a man, the opinion for which he suffered (conceived truly, or untruly in the hearts of a multitude) is not subject to the edge of any sword, how sharp or keen soever. I confess that the teeth are soon blunted that bite only out of the malice of a singular faction, but where Poyson is diffused through the Veins of a Common-wealth, with intermixture of bloud good and bad; separation is to be made rather by patient evacuation, than by present incision; the greatest biter of a State is Envy, joyned with the thirst of Revenge, which seldome declares it self in plain colours, until a jealousie conceived of personal dangers, breaketh out into desperate resolutions; hence comes it to pass, that when one male-contented member is grieved the rest of the body

If conspirators have one sympathy of mind, the conspiracy is never wholly suppressed, so long as one of them remaineth.

is

is ſenſible thereof, neither can a Prieſt or Jeſuit be cut off, without a general murmur of their Secretaries, which being confident in their number, ſecretly Arm for oppoſition, or confirmed with their Martyrs Bloud (as they are perſwaded) reſolve by patience and ſufferance to glorifie their cauſe, and merit Heaven. Do we not daily ſee, that it is eaſier to confront a private enemy, than a Society or Corporation? and that the hatred of a State is more immortal, than the Spleen of a Monarchy, therefore except it be demonſtrated, that the whole *Roman* City, which conſiſts not of one brood, may be cut off at the firſt ſtroke as one entire head, I ſee no cauſe to think our State ſecured, by ſetting on the skirts of ſome few Seminaries, leaving in the mean time a multitude of Snarlers abroad, who already ſhew their Teeth, and only wait opportunity to bite fiercely. I will not deny, that, what we fear, we commonly hate, provided alwayes, that no merit hath interceded a reconciliation; for there is great difference between hatred conceived againſt him that will take away the life, and him that may juſtly do it, and yet in clemency forbears to put it in effect; for the latter breedeth reverend aw, whereas the former ſubjecteth to ſervile fear, alwayes accompanied with deſire

Opinion ſetled in a multitude, is like Hydraes *heads, which muſt be cured with ſcarring and not by letting bloud.*

Clemency is a Divine inſtinct, and worketh ſupernal effects.

desire of innovations, and although it hath been affirmed of the Church of *Rome, Quod Pontificum genus semper crudele,* nevertheless out of Charity let us hope, that all devils are not so black as they are painted, some, or perhaps many of them there are, whom conscience, or in default thereof, pure shame of the world will constrain to confess that his Majesty most graciously distinguisheth the Theory of Popery; from the Active part thereof, as being naturally inclined, *Parvis peccatis veniam, magnis Severitatem commodare, nec pœna semper, sed sæpius pœnitentia contentus esse.*

Gorticii Axiomata Politica.

Tacitus in vita Agricol.

II.

Mistaking of punishments Legally inflicted, commonly proceeds from fond pitty, or the interest which we have in the same cause; both which beget blind partiality; admit then, that the Papall side, affecting merrit by compassion, may be neerly touched with the restraint of their Seminaries, it cannot be denyed I hope, except they had the hearts of Tygers, that in humanity they will prefer their ease of durance, before the rigor of death; and albeit that *Parsons, Bellarmin,* and the Pope himself, constrain their spiritual Children, to thrust their fingers into the fire, by refusing the Oath of Allegiance, notwithstanding we have many testimonies in judicial Courts, and printed Books, that

When Traitors in evils will not choose the least, it is an argument that they are desperate, and breath nothing but extremity of mischief.

that the greater part of them are of that *Theban* hunters mind, who would rather have seen his Dogs cruel acts, then have felt them to his own cost.

Garnet himself also in one of his secret Letters, Lamented, that after his death he should not be inrolled amongst the Martyrs, because that no matter of Religion was objected against him; yet it plainly appeared in his demeanour, that he would gladly have survived the possibility of that glory, if any such hopes had remained. Neither is it to be presumed, that being in Prison, he would ever have conceived that we durst not touch his Reverence, or that the Law was remiss which had justly condemned him, and left his life to the Kings mercy. It was the distance of the place and not *Parsons* that interpreted the sending over-seas of the Priests to be a greater argument of their innocency, than of his Majesties forbearance; For had Father *Parsons* himself been *Coram nobis*, his Song would rather have been of mercy then justice. It is truly said, that we are all instructed better by examples then precepts, therefore if the Laws printed, and Indictments recorded, cannot controul the Calumniations of those that wilfully will mistake Treason, for Religion: By the execution of two or three of that back-biting number, I doubt

It was a precept of Machivells, *to put on the mask of Religion.*

So it pleased Parsons *to cavil, of whom it might be truly spoken,* Malus malum pejorem esse vult, & sui similem.

Gross and brutish errors are sooner reformed, than meaner escapes, for so much as the one cannot be defended without impudency, whereas the other admits some colour or excuse and pity.

doubt not but the queſtion may readily be decided.

——Namque immedicabile vulnus,
Enſe recidendum eſt, Ne pars ſincera trahatur.

III.

To beſtow benefits on the bad, maketh them worſe and viliſieth the reward of the vertuous.

To dally with pragmatical Papiſts, eſpecially with thoſe that by their example and Counſel prevert his Majeſties Subjects, I hold it a point of meer injuſtice; For, what comfort may the good expect, when the bad are by connivency free to ſpeak, and imboldened to put their diſloyal thoughts into execution? For explaning therefore of my meaning, it is neceſſary to have a regard unto the nature of the Kings Liege-People, that are to be reformed by example of juſtice, and others, Forraigners, who will we, nill we, muſt be cenſurers of our actions; It hath been truly obſerved that the Nations of *Europe*, which are moſt remote from *Rome*, are more ſuperſtitiouſly inclined to the dregs of that place, then the neerer neighbours of *Italy*, whether that humour proceeds from the Complexion of the *Northern* Bodies, which is naturally more retentive of old Cuſtomes, than hotter Regions; or that the vices of the City, ſeated on ſeven Hills, are by

by crafty Ministers of that See, concealed from the vulgar sort, I list not now to discuss; but most certain it is, that the people of this Isle exceed the *Romans* in zeal of their profession; in so much that in *Rome* it self, I have heard the *English* Fugitives taxed by the name of *Pichia pelli Ingleſi*, Knock-brests, *id est*, Hypocrits; now as our Countrey-men take surer hold-fast of Papall traditions, then others; so are they naturally better fortified with a Courage to endure Death for the maintenance of that cause; for this Clymate is of that temperature out of which *Vegetius* holdeth it fittest to chuse a valiant souldier, where the Heart finding it self provided with plenty of bloud to sustain suddain defects, is not so soon apprehensive of death or dangers, as where the store-house of bloud being small, every hazzard maketh pale cheeks and trembling hands: *Angli* (say Ancient writers) *bello intrepidi, nec mortis ſenſu deterrentur*; And thereunto *Botero* the *Italian* beareth witness in his Relations; Many strangers therefore coming out of Forraign parts among the rarities of *England* desire to see whether Report hath not been too lavish, in affirming that our condemned Persons yield their Bodies to Death with cheerfullnesse, and were

Valour is often overcome by weakness, but being too much prized it turneth to unbridled furies.

were it not that by daily experience we can call our ſelves to witneſs of this truth, I could produce the Reverend Judge *Forteſcue*, who in commendation of our *Engliſh* Laws, made ſuitable (as he well obſerveth) to the imbred Conditions of the inhabitants of this ſoil, avoweth, that the *Engliſh* people in tryal for Criminal cauſes, are not compelled by tortures to confeſs as in other Nations it is uſed, for as much as the quality of the *Engliſh* is known to be leſs fearful of death than of torments, for which cauſe if the torments of the Civil Law were offered to an innocent perſon in *England*, he would rather yield himſelf guilty, and ſuffer death, then endure the horror of lingring pains. *Inſulani plerunque Furet* (ſaith one) and ſo true it is, that this Countrey is ſtained with that imputation, notwithſtanding that many are put to death, to the end that others by their fall, might learn in time to beware; If then it do appear that terrour prevails not, to keep men from offences which are condemned by Law, and Conſcience, what aſſurance can there be to ſcare thoſe, who are conſtantly ſatisfied in

The beſt Laws are made out of thoſe good Cuſtomes, whereunto the people is naturally inclined.

Uſe to ſee men dye with reſolution, taketh away the fear of death, for which purpoſe the Romans uſed the fights of their Gladiators.

The Hereticks called Publicans *when they were whipped they took their puniſhment gladly, their Captain* Gerrard *going before them and ſinging, Bleſſed are you when men do hate you. Andromachen. Si vis vitam miniſtare.* Seneca Trag.

their

their minds, that their ſufferings are either expreſly, or by implicitation for matter of Religion and health of their Souls; in ſuch caſe to threaten death to *Engliſh*-men, *Quibus nihil intereſt humine ſublimi ne putreſcant*, is a matter of ſmall conſequence, *Purpuratis Gallis, Italis, aut Hiſpanis, iſta minitare*, to a ſetled reſolution it boots not to ſhew the dreadful viſor of death; Menaces to prolong a wearisome life, prevail much more in ſuch caſes. Rightly did *Clement* the eighth conſider, that by burning two *Engliſh*-men in *Rome* for ſuppoſed Hereſie, he rather impaired his Cauſe than better'd it, inſomuch that many preſent at the reſolute death of Mr. *Marſh*, who was brought to duſt in *Campo di Sancta Fiore*, ſpared not to proclaim himſelf a Martyr, carried away of his aſhes for a Relique, and wiſhed their ſouls in the ſame place with his; which news brought to the Popes ear, cauſed him (as it was bruited about *Rome*) ſolemnly to proteſt, that none of the *Engliſh* Nation ſhould publiquely from that time be conſumed with fire: on the other ſide if we read the Volumes written in praiſe of their Prieſts Conſtancy, the *Martyrology* or *Callender* of *Martyrs*, and path way of Salvation as it were, chalked out unto the Papiſts, by ſacrifizing

Worldly deſires may be quenched with godly meditations, our heavenly hopes cannot be abated by earthly puniſhments.

It is a point of wisdome to maintain the truth with as little disputation as may be, least a good cause be marred with ill handling.

crifizing their lives for the Pope, we shall find that by taking away of one we have confirmed and united many, whereof I could give particular instance, if I thought any scruple were made in that point. As for forraign parts which hold with the Papall Supremacy, it is clear that they will be severe, and partial judges in this cause; for albeit that here in *England*, it is well known to all true and loyal Subjects, that for matter of *Roman* doctrine, no mans life is directly called into question? but that their disobedience in reason of State is the motive of their persecution; Nevertheless where a great Canker of Christendome is rooted in a contrary opinion, and things in this world are for the most part esteemed by outward appearance, this Land cannot escape malicious scandalls, neither shall there be want of Colleges to supply their Faction with Seminaries; Therefore again and again, I say, that if the state of the question were so set, that it were possible by a general execution of the Priests, and their adherents, to end the controversie, I could in some sort with better will, subscribe thereunto; But seeing I find little hope in that course, I hold it safer to be ambitious of the victory, which is purchased with less loss of bloud; and to proceed as *Tully* teacheth

Truth seldome prevaileth with the partiality of the people, which being ignorant is carried away with the outward semblance of things.

It is hard to make a rule so general, against which difference of Circumstance may not except.

teacheth his Orator, who when he cannot wholly overthrow his Adversary; yet ought he to do it in some part, and withall endeavour to confirm his own party in the best manner that may be.

IV

He that forbeareth to sow his ground in expectance of a good Winde or favorable Moon, commonly hath a poor crop and purse; so shall it fare with this State, if private whisperings of discontented persons, that never learn't to speak well, be too nicely regarded, yet ought they not to be sleightly set at nought, lest our credit grow light, even in the ballance of our dearest friends. The Papisticall Libellers inform against us, as if we were desirous to grow fat with sucking of their bloud, the very walls of their Seminary Colledge at *Rome* are bedawbed with their lying Phansies, and in every corner the Corner-creepers leave some badge of their malicious spleen against us, crying out of Cruelty and Persecution; but if the penalty of death be changed into a simple indurance of prison, what moat in our eyes can they finde to pull out? or with what Rhetorick can they defend their obstinate malapartness, which with repaying us ill for good, deserve to have coals of indignation poured upon their heads? *Visne muliebre Consilium?*

He that is calumniated by many, is in danger, first to be suspected by his friends, and shortly to be condemned if the slander continue.

That Counsel takes best effect that is fitted to the nature of times and persons.

said *Livia* to *Augustus*; Let severity sleep a while, and try what alteration the pardoning of *Cinna* may procure; The Emperour hearkned to her Counsell, and thereby found his Enemies mouthes stopped, and the fury of their malice abated. Some there are perchance that will term this Clemency innovation; and vouch the President of that City, which permitteth none to propound new Laws, that had not a cord about their necks ready for vengeance, if it were found unprofitable; but let such Stoicks know, that there is great difference between the penning of a Law, and advice giving for the manner of executing it; neither (by their leaves) are all innovations to be rejected, for divine *Plato* teacheth us, that in all Common-wealths upon just grounds, there ought to be some changes, and that States men therein must behave themselves like skilfull musicians, *Qui artem musices non mutant, sed musices modum.*

Those Changes of States are safely made, which reserving most of the Ancient form, betters it and reduces the defects into order.

V.

That an evil weed groweth fast, by the example of the new Catholique increase, is clearly convinced; but he that will ascribe this generation simply to his Majesties heroicall vertue of *Clemency*, argueth out of fallacy, which is called *Ignoratio Elenchi*; was not the zeal of many cooled towards the last end of

The Church is most zealous, when Persecution is fresh in memory; when those times are forgotten, we grow to loath that which we enjoy freely.

Queen

Queen *Elizabeths* Raign? hath not the impertinent heat of some of our own side bereft us of part of our strength, and the Papacy with tract of time gotten a hard skin on their Consciences?

Parva metus primo, mox sese attollit in altum?

But if we will with a better insight behold how this great quantity of spawn is multiplyed, we must especially ascribe the cause thereof to their Priests, who by their deaths prepare and assure more to their sect, than by their lives they could ever perswade; It were incivility to distrust a Friend, or one that hath the shew of an honest man; if he will frankly give his word, or confirm it with an Oath, but when a Protestation is made upon the last gasp of life, it is of great effect to those that cannot gainesay it upon their owne knowledge.

The number of Priests which now adayes come to make a Tragicall conclusion is not great; yet as with one Seal many Patents are sealed; so, with the loss of few lives numbers of wavering spirits may be gained, *Sanguis Martyrum, Semen Ecclesiæ*; And though those Priests having a disadvantagious cause, are in very deed but counterfeit shadowes of Martyrs unto a true understanding, yet will they be repu-

In this case the question is not so much of the truth of it, as who shall be Judge, and what Censure will be given.

ted for such, by those that lay their Souls in pawn unto their Doctrine, with whom if we list to contend by multitude of voices, we shall be cried down without all peradventure, for the gate of their Church is wide, and many there are that enter thereinto.

VI.

By divers means it is possible to come to one and the self same end; seeing then that the summe of our well-wishing is all one, namely that Popish Priests may have no power to do harm, it is not impertinent to try sundry paths, which may lead us to the perfecting of our desires. Politicians distinguish *inter rempublicam constitutam & rempublicam constituendam*, according to the severall natures whereof Statists are to dispose of their Counsells and Ordinances; were now the Rhemists and Romulists new hatched out of the shell, the former course of severity might soon bury their opinions with their persons, but since the disease is inveterate, variety of medicines is judicially to be applyed. The *Romans* did not punish all crimes of one and the selfsame nature with extremity of death; for some they condemned to perpetuall prison; and others they banished into an Island or some remote Countrey; even in the case of Religion they were very tender to dip their fingers in bloud;

In the first 11 years of Q. Eliz. it was easier to subdue Popery, than now, for then they feared to irritate the State, not knowing how farre severity might extend, now knowing the worst, they are resolved Agere & Pati fortia.

bloud; for when *Cato* was Consull, (and it seemed good unto the Senate to suppress with violence the disordered Ceremony of the *Bacchanalls*, brought by a strange Priest into the City) he withstood that sentence, alledging that there was nothing so apt to deceive men as Religion, which alwayes pretends a shew of divinity: and for that cause, it behoved to be very wary in chastising the professors thereof, lest any indignation should enter into the peoples minds, that some-what was derogated from the Majesty of God. Others (more freely) have not spared to place Religion, (I mean that Religion which is ignorantly zealous) amongst the kinds of Frenzie, which is not to be cured otherwise than by time given to divert, or qualifie the fury of the conceipt,

Vulgus ill movosum animal, quod facilius duci, quam cogi potest.

Tantum Religio potuit suadere malorum.

VII.

Howsoever in valuing the power of a City or strength of arguments, quality and worth is to be preferred before number; nevertheless where the uttermost of our force is not known, it imports much to have it conceived; That the multitude stands for us, for doubts and suspicions cast in an enemies way evermore makes things seem greater, and more difficult than they are indeed; we have by Gods mer-

Many Politicians encourage the faint-hearted, and when an enemy cannot prevail against number, his thoughts are not how to offend, but how to make a safe retreat.

cy the Sword of justice drawn in our behalf, which upon short warning is able to disunite the secret underminers of our quiet; we have a King zealous for the house of the Lord, who needeth not to feare less success in shutting up of Priests, than our late Queen had, in restraining them in *Wisbich* Castle, where lest their factious Spirits should grow rusty, they converted their Cancer to fret upon themselves, and vomitting out Gall in *Quod-libets*, shewed that their disease was chiefly predominant in the spleen, what tempests they have raised in their College at *Rome*, their own books, and many travellers can witness; the storm whereof was such, that *Sixtus Quintus* complained seriously of the vexation which he received oftner from the English Scholars, then all the Vassals of the Triple Crown; and untruly is the Magistrate noted of negligence or overmuch security, that layeth wait to catch the Foxes, and the little Foxes which spoyl the Vineyard, though afterwards without further punishment he reserve them to the day wherein God will take accompt of their Stewardship; for if *Aristotles* City, defined to be a society of men assembled to live well, be the same which in our Law, hath reference to the maintaining of the people in Peace, so long as we taste of the sweet

More Priests may be shut up in a year than they can make in many.

Desire of innovation is rash and contentious, and therefore can hardly agree of a head.

Peace is always to be wished Provided that under the canket thereof, there be not a mischief entertained worse than War it self.

sweet of a peaceable Government we cannot say but that we live well, and that the City consisting of men and not of walls is happily guided.

VIII.

An oath is of force, so long as it is thought lawfull, when that opinion is crazed, it doth more hurt then good.

An Oath is a weak bond to contain him that will for pretended conscience sake hold no faith with heretiques, or by absolution from a Priest thinketh himself at liberty to fly from any promise or protestation whatsoever; therefore when I remember that *Watson* the Priest, notwithstanding his invectives against the Jesuits, gained liberty to forge his traiterous inventions, and had others of his society in the complot, I judge it safer to make recluses of them, than to suffer such to dally with us by books, and some idle intelligences cast abroad onely as a mist to bleare our eyes. But how shall we finde the meanes to apprehend those disguised Romanists that borrow the shape of Captaines, Merchants, Gentlemen, Citizens, and all sorts of people, and by equivocation may deny themselves to be themselves? In answer to this question, I will first shew the reason why they are not pursued and taken, and hereafter make an overture how they may be bolted out of their hutches; the nature of Man howsoever in hot bloud, it be thirsty of revenge, in a cold temper it hath a kind of Nausea as I may call it, or a di-

One man in another beholdeth the Image of himself, and thereby groweth compassionate and sensible of that which may fall to himself.

staste of taking away the lives, even of the Nocent, insomuch that in all Sises and Sessions, an offender can hardly be condemned, whom the foolish pitty of man will not after a sort excuse, with laying some imputation on the Judge, part on the Jury, and much on the Accuser; and such is their blind affection, that the prisoner who perhaps was never recommended for handsomeness, will be esteemed of them, for one of the propereſt men in the company; from hence it comes that the name of Serjeant, or Pursevant is odious, and the executioner, although he be the hand of justice, is esteemed no better than an enemy of mankind, and one that lost honesty and humanity in his cradle; Reverend Master *Fox* was wont to say, that spies and accusers were necessary members in a Common-wealth, and deserved to be cherished, but for his own part he would not be any of that number, or wish his friends to affect such imployments; and albeit that the Law permits, and commands every man to apprehend a felon, do we not see commonly very many content to stand by and look on while others performe that office? likewise it is evident, that if such as are tender of their reputations, be very scrupulous personally to arrest men, for civill actions of debt, they will be more unwilling instruments of

What men do unwillingly is never done effectually.

draw-

drawing their bodies to the Rack or the Gallowes, especially when there is any colour of Religion to be pretended in their defence; the diversity of mens faces is great, but the difference of their minds in this case is more variable, wherein the meanest have thought as free as the highest, besides this, there are too many of the blind commonalty altogether Popish, though indeed they make honourable amends for their treason; verily I know not what misguiding of the mind it is, that maketh men foretast the possibility of alteration in matters of Religion, and for that respect they are exceeding backward in discovery, and laying hands on Seminaries, yea and are timorous in enacting sharp Lawes against them, as those that silently say amongst themselves,

When many tumultuous persons assault, there will be a fray.

Sors hodierna mihi, cras erit illa tibi.

S me also survive? Who, remember that in Queen *Maries* time, the Protestants alledged a Text, that the tares should not be plucked up before harvest, nay shall I speak a buggs word, there is no small number that stand doubtfull whether it be a gratefull work to cross Popery, or that it may be done safely without a foul aspersion of Puritanism, or a shrewd turn of their labours, at some time or other, by which unhappy ambiguity it comes to pass, that these *Animalia Amphibia* (the Priests I mean)

that

Vertue neither praised nor rewarded waxeth cold.

that prey on the Souls and bodies of either sex, unatached, revell where they list, though they be more seen than a man dancing in a Net; how much fitter were it for us courageously to invite them to our party, by preaching or confuting them by writing, and unto the State wherein we stand, wisely to apply the saying of the *Assirian* King to his Souldiers, You are fools (quoth he) if there be any hope in your hearts to redress sorrow by flight, or rather indeavour to make them fly that are the causers of your grief, assuring your selves, that more perish in flight, then in the Battail, even as many seeking to meet the Papists half way discomfort our own party.

IX.

An ill name given to a good thing discourageth men from medling with it.

It followeth now (according to the Method prescribed) that an overture be made to get the Jesuits and their shadowes the Priests, into possession; it hath been heretofore recited, that the unwelcome name of a bloud-sucker, a busie-body, or a Puritane, hath been shrewd Scar-crowes unto many honest minds; by abrogating therefore of those or such like imputations many will be stirred up to undertake the apprehending of the adversaries unto the truth, especially when for their pains and time imployed, they shall deserve and have the title of good Patriots, dutifull Sub-

Subjects, and zealous Christians; how ready is every common person to carry a malefactor to the stocks, rather then unto the Gaole or execution? and doubtless they will be no less forward to attach a Priest, when they are assured that the worst of his punishment shall be a simple restraint within the walls of an old Castle. A certain kind of people there is, with whom money playes a more forcible Orators part, then any perswasion of the dutifull service which they owe to the Commonwealth, these men will not be negligent to give intelligence, and also to procure it faithfully; Provided that reward may help to line their threadbare purses, and exempt them from need to sell liberty unto Seminaries; and where assurance of gaine is propounded for discovery, what master or house-keeper will trust his servant with keeping of his Priest, or sleepe quietly while he is engaged to the danger of a Mercenary? I remember that in *Italy* it was often told me, That the bountifull hand of Sir *Francis Walsingham* made his Intelligencers so active, that a Seminary could scarcely stir out of the gates of *Rome* without his privity, which successfully mediation of gold may as readily be obtained from *Syvill*, *Valladolid*, *Douay*, *Louaine*, *Paris*, and any other places, and by

Wise men do forecast how to do most with least noise.

force-

fore-warning given of their approach, they may be waited for at the Ports, and from thence ſoon conveyed to a ſafe lodging. But whence ſhall the ſtream flowe that muſt feed this bounty? it is a doubt eaſily ſatisfied, if ſome thouſands of Poundes out of the Recuſants penalties be reſerved in ſtock, and committed by his Majeſty unto the diſpoſition of zealous diſtributers, who will not be afraid to conclude *Perdat fiſcus, ut capiat Chriſtus*; neither need we ſeeke any further ſuccour to repair decayed Caſtles, and therein to defray the charge of the Prieſts, with a ſure guard to keep them, than the aforeſaid forfeitures that by the Juſtice of the Law may be collected; which courſe if ever it come happily to be entertained, and that Recuſancy ceaſe to be an ignominious prey to the ſubject, the proceedings for Religion ſhall be leſs blamed, and perhaps altogether unjuſtly accuſed by any graceleſs *Gretzerus* or *Cacodamon Johannes*, tincting their pens in Gall and Vineger; for beſides occaſion of Calumniation given by ſutes of that nature, it is evident that many Recuſants that would be indicted for the King, and the effecting the Project aforeſaid, ſhall eſcape without puniſhment, and be borne out againſt the power of a private perſon; begging to

Particular officers muſt be appointed, what is to all is commonly performed by none.

no

no other purpose, than hath heretofore been used: and albeit the penalty be rated at 20 l. a moneth, yet was it never the Law-makers intent, that such as were not able to pay so great a summe, should go scot-free, but that according to the proportion of their ability, they should do the penance of their Purses, whereas now if the voice of the people (which is said to be the voice of God) is to be credited, the poorer sort is skipt over, as if they owed no souls to God, nor duty to their Soveraign. A poor Man (saith one) is to be pittied, if he offend through necessity, but if he do amiss voluntarily, he is more severely to be chastised, for so much as wanting friends, and meanes to bear him out, it sheweth that this fault proceeds from presumption.

The service done for the Kings proper use, hath his Warrant and Countenance; but when a private man hath the gain, neither reward nor bearing out can be expected; and by consequence Recusants are free.

X.

Let us now pre-suppose, that all the whole Regiment of *Jesuits* and *Seminaries* were lodged in safe custody, may we then perswade our selves, that Popery will vanish like a dumb shew; I am clearly resolved that though it receive a great eclipse, notwithstanding without other helps the Kingdome of *Antichrist* will onely be hidden, as a weed that seems withered in the Winter, and is ready to sprout out with the Spring. Temporall armes are remedies

Medicines that work in the spirits of men, are of greater force, and cure more surely then outward plaisters.

medies serving for a time, but the Spirituall sword is permanent in operation, and by an invisible blow workes more than mortall man can imagine. The word of God carrieth this two-edged weapon in his mouth, which is to be used by faithfull Ministers of the Church, whom pure zeal, without respect to worldly promotion, or persons, ought to encourage: Of Judges the Scripture saith *Estote fortes*; and daily we see, that sitting in their judiciall seats, God inspireth them with greater courage, than when, as private persons, they are to give their opinions; no less is the power of the Holy Ghost in his servants, that out of the Pulpit are to deliver his Ambassage; let them therefore not be dismaid to speak out plainly, and tell the truth, without running a middle course between heat and cold, unprofitable discanting upon the Scripture, with an old postile, or for want of better matter waste the poor time shut up in an hour-glass, with skirmishing against the worthy Pillars of our own profession: Rumor which is ever ready to take hold of evill, hath raised a secret, though (as I hope) a causeless suspicion, that there should be some combination underhand, by changing the state of questions, to put us in our old dayes to learn a new Catechisme, and when they have brought

Speech is the interpreter of the minde, therefore who so useth in Divine matters to speak reservedly, and in a double sense, he will be suspected to have a double heart, and unfit to teach them that trust him not.

us

us out of conceipt with the Reverend Interpreters of the Word, to use us then as the Wolves (mentioned in *Demosthenes* Apology) handled the Shepheards when they had delivered up their Dogs. Most sacred was that Speech of our gracious King, concerning *Vorstius*, *He that will speak of* Canaan, *let him speak the language of* Canaan. How can we draw others to our Church, if we cannot agree, where, and how to lay our foundation? or how may we cleanse the Leprous disease of dissention, which the Papists which are least assured to themselves, and most doubtfull of their Salvation, are not ashamed to ascribe unto many of us? I would not have Ministers indiscreet like Dogs to barke against all, whether they know or know them not, I like better the opinion of *Aristotle*, who adviseth those that stand in guard of a place, to be curst onely to such as are about to endammage the City: If Pursevants or other Civil Officers, would learn to keep this rule, they might go about their business with much credit. The imagined fear of inviting the *Romish* Faction by force to deliver their Ghostly Fathers out of Prison, moves me not a whit; for I cannot believe that they esteeme them at so dear a price, as they would runne the hazard, by freeing others out of hold, to put themselves

A good Pastor is the Physician of the Soul, and ought to apply his doctrine according to the tenderness or hardness of the Conscience, for want of which discretion some mens zeal hath done hurt.

selves into their places. Some will say that a man of Straw is a head good enough for a discontented multitude; That the Papists are very chollerique it appears sufficiently by their writings, yet it hath pleased God to send those curst Cowes short hornes; that when they should not finde a man of sufficiency to serve their turn, they were faine to do homage to *Garnetts* straw, forgetfull as they are that such stubble cannot endure the tryall of fire: But unto us, that ought to be Doers, as well as Professors of the Gospell, let this remain as a memorable Theorem; *Religion is the Mother of good order, Good order is the cause of prosperous Fortune, and happy Successe in all Counsells, and enterprises*, Therefore in what estate soever there wanteth good order, it is an evident Argument that Religion goes backward.

False miracles and lying news are the food of superstition, which by credulity delude ignorant people

God which is the great Law-maker, by his Laws prevents sins, to the end punishments may be inflicted on it justly; as to avoid Idolatry he forbiddeth making of Images; He that cannot live chast, let him marry, &c.

XI.

I have ever held it for a kinde of Injustice to omit the execution of mean Lawes, made to prevent the effects of Idlenesse, and then to apply main extremity of the sword, when the proling habit gotten by that vice comes to light; no less is the course uncharitable (with pardon for this presumption be it spoken) when we spare them that have no Religion at all, and censure those that can give an accompt of some-

ſomewhat tending to that purpoſe. He that is in miſery muſt be born withall if he ſpeake miſerably, and when the child from his mothers breſt hath ſucked nothing but Popery, a man had need to be angry with diſcretion if he hear him ſpeake in the voice of a Papiſt. God calleth ſome by miracle, but the ordinary meanes is his Word; if that meanes in any place of this Land be wanting, of what Religion is it likeliest the people will be? I ſuppoſe that few men will gainesay my aſſertion, that outward ſence will direct them to Popery, which is fuller of Pageants than of ſpirituall doctrine; and what is the cauſe that after ſo many yeares preaching of the Goſpell, the Common people ſtill retaine a ſcent of the *Roman* perfume? the Cauſe is for that the formall obedience of coming to Church hath been more expected than the inſtruction of private families, publique Catechizing is of great uſe, but the firſt Elements thereof are to be learnt at home, and thoſe things which we learn from our Parents, ſticke more ſurely in our mindes; what was the cauſe why the *Spartans* continued their Government ſo many Revolutions of times, without mutation? Hiſtories record, that learning their Countrey Cuſtomes from their Infancy, they could not be induced to alter them; And

A man is ſaid to know ſo much as he remembreth, and no more; and we remember beſt, what we learn in our youth, therefore if we will be wiſe when we are old, we muſt be taught when we are young.

Out of Oeconomicall Government, the diversity of States grow, & such as a Princes house, is the State of the Commons for the most part: by which reason a Prince may by the Survey of his House, have an aim how the Commonwealth is affected.

in this our native soile we perceive, that the Common Lawes which rely on antient Customes, are better observed than late Statutes, of what worth soever they be: So doth it fare with the poore people, which being once seasoned with the old dreggs of Papisme, will hardly be drawn from it, till the Learning of the true Faith be growne to a Customе. I will prescribe no order nor Officers, to effect this; but I suppose that the antient laudable course, by the Bishops confirmation, will not be sufficient to fulfill so great a taske, the Minister must and ought to be the Principall and immediate hand to give assistance to so gracious a worke; and in case any be defective in their duty, the Reverend BISHOPS may take notice thereof in their severall Visitations.

By the Lawes there were Tything men, who gave accompt for ten households: Some such Officers might be good in this case; for I hold the breaking of the Sabbath to be the ruine of our Religion.

Perhaps it will be thought a hard task to constrain old people to learn the *A. B. C.* of their Christian beliefe, but how hard soever it be, I hold it no incivility to prepare people of all ages for the Kingdome of Heaven. By the order contained in the Book of Common Prayer, on Sundayes and Holydayes, half an houre before evensong the Curate of every parish ought to examine children sent unto him, in some points of the Catechisme; and all Fathers,

thers, Mothers, Maſters and Dames, ſhould cauſe their Children, Servants, and Prentiſes, to reſort unto the Church at the time appointed, there to heare and be obediently ordered, by the Curate, untill ſuch time as they have learnt all that in the ſaid Booke is commanded, and when the Biſhops ſhall appoint the Children to bee brought before them, for their Confirmation, the Curate of every Pariſh ſhall ſend or bring the names of thoſe Children of his Pariſh which can anſwer to the queſtions of the Catechiſme; and there ought none to be admitted to the Holy Communion, untill ſuch time as he can ſay his Catechiſme, and bee confirmed. Many times I have ſtood amazed, to behold the Magnificence of our Anceſtours buildings, which their Succeſſours at this day are not able to keepe up, but when I caſt mine eyes upon this excellent Foundation laid by the Fathers of the CHURCH, and perceive their Children neglect to build thereupon, with exceeding marvell, I reſt almoſt beſides my ſelfe, for never was there better ground-plot layd, which hath been ſeconded with leſſe ſucceſſe: It was not the Bull of *Pius Quintus* on the Biſhop of *Londons* Doores, or the forbearing to hang up Prieſts that have wrought this Apoſtacy, but the Idle-

It were fit alſo that they learnt how to diſtinguiſh the common grounds of Popery, wherby the Prieſts deceive poor people.

He that knows not the true cause of an evil, cannot help it but by Change, which is a dangerous guide of a State.

nes and insufficiency of many teachers, conspiring with the peoples cold zeale, that hath beene the Contriver of this Webb. Untill the eleventh yeare of Queene *Elizabeths* Raigne, a Recusants name was scarcely knowne, the Reason was because that the zeale begotten in the time of the *Marian* Persecution was yet fresh in memory, and the late Persecutors were so amazed with the sudden alteration of Religion, that they could not chuse but say, *Digitus Dei est hic.* In those dayes there was an emulation betweene the Clergy and the Laity; and a strife arose whether of them should shew themselves most affectionate to the Gospell; Ministers haunted the Houses of worthiest men, where Jesuits now build their Tabernacles; and poor Countrey Churches were frequented with the best of the Shire; the Word of God was precious, Prayer and Preaching went hand in hand together, untill Archbishop *Grindalls* disgrace, and *Hatefields* hard conceipt of Prophecying brought the flowing of those good graces to a still water; the name of a Papist smelt ranck even in their owne nostrills, and for pure shame to be accompted such, they resorted duely both to our Churches and Exercises; but when they saw their great *Coriphæus Sanders* had slily pinned the names of

Where good men are afraid to call a vice by the Proper name, it is a sign that the vice is common, and that great persons (whom it is not safe to anger) are infected therewith.

De Schism. Anglicano & vis. Mon. Eccles.

Puri-

Puritans upon the ſleeves of the Proteſtants that encountered them with moſt courage, and perceived that the Word was pleaſing to ſome of our own ſide, they took heart at graſſe, to ſet little by the ſervice of God, and duty to their Soveraign.

Therewith ſtart up from amongſt us, ſome that might have been recommended for their zeale, if it had been tempered with diſcretion, who forerunning the Authority of the Magiſtrate, took upon them in ſundry places and publiquely to cenſure whatſoever agreed not with their private conceipts, with which groſſe humours vented in Pulpits and Pamphlets, moſt men grew to be frozen in zeal, and in ſuch ſort benummed, that whoſoever (as the worthy Lord Keeper *Bacon* obſerved, in thoſe dayes) pretended a little ſpark of earneſtneſſe, he ſeemed no leſſe than red fire hot, in compariſon of the other. And as ſome fare the worſe for an ill neighbours ſake, dwelling beſide them, ſo did it betide the Proteſtants, who ſeeking to curbe the Papiſts, or reprove an idle drone, were incontinently branded with the ignominious note of Preciſian, all vvhich vvind brought plenty of vvater to the Popes Mill, and there vvill moſt men grinde vvhere they ſee apparance to be vvell ſerved.

Some think that if theſe mens zeal had by order been put to imploy it ſelf otherwayes, and a taſk ſet them to doe ſome good and memorable thing in the Church, they might have been reformed, or made harmleſſe by diverſion.

Head-ſtrong Papiſts are not eaſily ſubdued, yet muſt they not be ſuffered to grow to a Faction, Diſcretio pro lege diſcernere quid ſit res muſt lay the burthen in the right place.

XII.

Without Reformation in this point, Popery will still encreaſe, but as all vertuous enterprizes are difficult, ſo is this moſt intricate.

A wiſe houſeholder will caſt up his reckonings to ſee what loſſe or profit he hath made in a year

If without great inconveniency, the Children of the Papiſts could be brought up out of their Company, it were a happy turn, but I finde it to be full of difficulty; there is proviſion made to avoid Popiſh School-maſters, but there is no word againſt Popiſh School-miſtreſſes, that infect the ſilly Infants while they carry them in their arms; which moveth me to ſuppoſe that the former propoſition to examine how Children and ſervants are brought up, and truely to certifie the liſt of the Communicants and Recuſants, will be the readieſt means to let his Majeſty know the yearly increaſe or decreaſe of the Church in every Dioceſſe. And whoſoever ſhall ſend his Children, or any of his Majeſties Subjects to be placed in Monaſteries or Seminary Colleges, or Popiſhly to be brought up in forraign parts, I think that for puniſhment both one and the other worthily might be diſfranchiſed of the priviledge due to Engliſh men, ſo farre forth as any good by the Laws may deſcend to them, but not to be exempted from the Penalties thereof in the regall juriſdiction of the Crowne. I know well that contradiction is odious, and makes a man ſeem ambitious to be thought more underſtanding than others, in which caſe the *Spaniard* uſeth only to tax me I am preſumptuous, whom he would

Cuevara Epiſt. Aurea.

would call foole, if civility would bear it; but in my defence, I hope it ſhall ſuffice againe to revive my former proteſtation, that I diſcourſe by the way of Propoſition, rather than arrogantly of defining any thing, with pardon therefore may I bee permitted to ſay, that the firſt eaſie Law of twelve pence, inflicted on him that could not give a reaſonable excuſe for his abſence from Church on Sundayes, was one of the beſt ordinances that hath hitherto been enacted; but while we ſought to make new Statutes, ſavouring of more ſeverity, we neglected the old, and were loath to execute the new, for it is a certaine rule, that whoſoever in policy will give liberty, and yet ſeem to ſuppreſſe a crime, let him procure ſharpe Lawes to be proclaimed, which are neceſſary only for ſome times, and rare occaſions, to be put in execution, but not to be an ordinary worke for every day of the weeke; daily uſe likewiſe teacheth us, that it is leſſe grievous to puniſh by an old Lawe than by a new, for ſo much as truth it ſelfe ſeldome gets credit without proof, and it is hard to free the people of ſuſpition, that new Lawes are not rather invented againſt the particular perſons and purſes of men, than againſt their corrupt manners; by force of which reaſon I am induced to conceive,

The Law which took immediate notice of an offence & gave a quick redreſſe, and corrected the poor as well as the rich.

Sharp Lawes that ſtand upon a long proceſſe, after a manner ſeem to diſpence with the vice.

The allegiance to God ought to precede the temporall obedience, for if the first may be obtained, the second will follow of it self.

ceive, that the old use of the Church contained in good nurture, and Ecclesiasticall censures, will much more prevaile to muzzle Popery, than any fresh devises whatsoever; neither do I thinke it blame-worthy to affirme, that our Cause hath taken harme by relying more on the temporall than the spirituall Armes, for while we trusted that capitall punishments should strike the stroke, we have neglected the means which would for the most part have discharged the need of such severity; the Oath of Allegiance is not offered generally to servants and mean people, who if they had taken the Oath, by absolution of a Priest might recoyle from it, or change their opinion at leasure, without any ready meanes to discover their Legerdemaine, that Oath I feare will not be often presſed, and to them that shift from place to place, how can it be tendred? the principall Papists now cover themselves in the crowd of the multitude, but if we can discover the affection of the multitude they will easily be unmasked, and being singled out rest ashamed of their nakednes (which under correction of better judgement) may be effected, if every new commer to inhabit in a Town, and servants newly entertained, within a week or fourteen dayes, be caused to repaire to the Minister, there in pre-

This course will discover more than the Oath of Allegiance, and prevent many from falling off by reason of the quick discovery.

sence

ſence of the Church-wardens and other honeſt men, to ſubſcribe unto ſuch briefe and ſubſtantiall Articles concerning faith and allegiance as ſhall be according to Gods word and juſtice ordained to diſtinguiſh the ſheep from the Goats; in forrain Countreys every hoſt is bound to bring his gueſt before an Officer, there to certifie his name, with the occaſion of his Comming, and intended time of aboade in thoſe parts, and in caſe he ſtay longer, he muſt again renew his licence; ſo curious and vigilant are they alſo to keep their Cities from infection, that without a Certificate witneſſing their comming from wholſome places, they may not eſcape the *Lazaretto*; no leſſe ought we to be watchfull to prevent the contagion of our Souls, than the other Nations are of their bodies. Every thing is hard and ſcarcely pleaſing in the beginning, but with time ſome ſuch courſe may be readily put in execution, which I propound rather as matter for betterheads to work on, than peremptorily to be inſiſted on in the ſame termes; but leſt any charge me with temerity, that where I deſire to know the multitudes inclination, by the means aforeſaid, I ſatisfie my ſelf with their Parrats language, pronouncing it knows not what, I think it not impertinent to put them in mind, that heretofore I have required inſtruction, both pre-

So long as houſes and lodgings in London *are let to Papiſts, the Prieſts will be received, and from thence ſhall the Country be infected.*

If we can prevent the increase of Papists, those that now live must either be reformed, or in time yield to nature, and then shall a new age succeed of Christians, by education made Religious.

precedent and subsequent, and am ever of the mind, that though all this cannot be done at once, yet it is necessary alwayes to be doing our best; knowing, that not to go forward in Religion, is the ready way to go backwards; it is not the outward obedience of comming to Church, that discovers the inward thought of the heart, it is the confession of the tongue that must utter those secrets, and where the Curates are insufficient, or the Parish great, I wish they had Catechists to assist them, maintained by the purses of the Recusants, which pension being collected for Gods cause, will free us of scandall, though it grieved them to pay the spirituall Army waged against their owne stratagems; surely by giving them way in petty matters, they are grown to be very masterfull in their party. *Plato* affirmeth that the popular State proceeded from the Licence which the people took to make immoderate applauses in the Theaters, when as by arrogating that immunity without controllment, in presence of their Governours, and perceiving the Nobility to joyn with them in the same passions, they thought their heads as worthy to governe, as any of those were made out of the same mould: In like manner while we suffer ignorance openly to maintain such petty glimps of Popery as are thought to be scarce worthy

thy to be looked at, in ſmall matters run an indifferent courſe, which neither makes ſure friends nor feeble foes, unawares they take the Bridle from us, and eat out Religion, as it were by an inſenſible *Gangrena:*

Principiis obſta, ſero medicina paratur
Cum mala per longas invaluere moras.

The breachers of a bad cauſe being touched in Conſcience, at the firſt move ſlowly, but if they prevaile they grow tyrannous beyond meaſure.

For by ſufferance of breaking ſmall laws people are boldned to ſet the greater at nought.

To comprehend all things in a Law which are neceſſary to the reformation, I neither hold it profitable nor expedient, yet it is diſcretion to provide for the moſt important, ſmaller matters whereof the Lawes ſpeak not are to be commended to the diſcretion of Parents, Miniſters and other Reverend perſons, who by example and advice may prepare younglings by education and Cuſtom to obey the Laws, eſpecially ſuch as are in high place ought in this behalf to be like *Ceſars* wife, *Non ſolum Crimine, ſed etiam Criminis ſuſpitione vacare*, and with ſuch circumſpection to behave themſelves, that the world may conceive, in requiring obedience to God, and their Soveraign, that they hold the multitude rather for companions than ſlaves; If great men take another way, they may ſeduce many by example, though by words they expreſſe not their concealed opinions, *Tace & lequere* ſaid *God* to *Moſes*,

Moſt men will affect to be ſuch as the higheſt Truſts, and Favours.

A great man is an Idol in the eyes of meane People, and drawes many to imitate his actions.

Moſes, it is the ſpeech of the heart, which utters more than letters, or ſillables. And in our common Lawes it is held maintainance, when a great perſon onely by his preſence countenanceth a cauſe; neither let us ſecure our ſelves with this argument, The Papiſts are pliable in ſmall matters, *Ergo*, they will yeeld in greater; And becauſe they took no Arms in 88. therefore it were needleſſe curioſity to ſuſpect them now: for who knowes not that ſmall baits are uſed to take the greateſt Fiſh, *Ut cum eſcauna etiam hamus devoretur.* Warineſſe is the ſinews of wiſdome, and nothing is more dangerous than to be ſecure in matters of State. Therefore for the Laws already made, I wiſh that the moſt effectuall of them which leaſt concern life, may be executed; for better it were not to make them, than by neglect to ſet them at liberty: Seeing that many offences there are which men would abſtain from, if they were not forbidden, but when a ſtrict Commandement is avoided without puniſhment, thereout ſprings an unbridled licenſe and hardly to be reformed by any rigour.

Few Laws well executed are better than many.

To conclude, I ſay freely, that whoſo endeth his dayes by a naturall death, he ſhall be ſubject to many mens dooms for every particular offence; But when for Religions ſake a man triumpheth over

over the ſword, that one eminent Vertue razeth out the memory of other errours, and placeth him that ſo dieth in Paradiſe, (if common opinion may be lawfully vouched) vvhich glory having many followers and admirers, maketh even dull ſpirits to affect their footſteps, and to ſell their lives for the maintenance of the ſame cauſe. I need not Envy the name of a Martyr to the Jeſuite; for his cauſe if it be rightly vweighed, vvill blanch that title; but I deſire to have all thoſe Lineaments defaced, vvhich may compound that counterfeit Image; in proſecuting of vvhich purpoſe, if I have failed in my advice, and by confuſed handling, intricated the queſtion, I humbly requeſt, that a vviſe mans verdict may mitigate the heavineſſe of the cenſure.

A Crown of Glory once attained, hath power to diſpence with former faults.

It is neither good to praiſe bad Counſels, becauſe of their good ſucceſſe, nor to condemn good Counſels, if the event prove not Fortunate, leſt many be animated to adviſe raſhly, and others diſheartned to Counſell gravely.

He Counſells beſt, that prefers the Cauſe of God, and the Commonwealth before any particular.

Illi mors gravis incubat qui notus nimis omnibus ignotus moritur ſibi. *Seneca Trag.*

Auguſt 11. *Anno Domini* 1613.

THE

THE MANNER AND MEANES HOW THE KINGS OF ENGLAND *Have from time to time* SUPPORTED *And repaired their* ESTATES.

Written by Sir ROB. COTTON Knight and Barronet, *Anno nono Jacobi Regis Annoque Domini* 1609.

LONDON:

Printed in the Year 1672.

The Manner and Means how the

KINGS OF ENGLAND

Have from time to time

SUPPORTED AND *REPAIRED* THEIR ESTATES.

THE Kings of *England* have ſupported and repaired their Eſtates,

First, by an Annual proportioning their Iſſues, and Expences, with their certain and Caſual Revenues.

And that either by { Advice of their *PRIVIE COUNCEL*, or by *PARLIAMENT*.

Secondly, by abating and reforming the Exceſs of houſhold, *&c.*

Thirdly, by raiſing of Money, and improving the Revenues of the Crown.

Firſt, for proportioning of the Iſſues, &c.

Hen. 4. Ex rot. orig. inter acta Concil. Hen. 4.

Henry 4. *Anno* 12. When the Revenue and profits of the Kingdome, together with the Subſidy of Wool, and Tenth of the Clergie, amounted to no more then 48000 l. of which 24000 marks were allotted for expence of Houſe; moſt of the reſt to the Guard of the Sea, and defence of this Kingdome, the Realme of *Ireland*, and *D*ominions in *France*: In this eſtimate the profits by Wards and Marriage, was but 1000 l. And then an Ordinance was made by the King, Prince, and all His Counſel there named in the Roll.

The like was *Anno* 11. when for the charge of houſe was appointed 16000 l. and 7000 l. to the City of *London*, in diſcharge of the Kings debt to them.

Hen. 5. Ex rot. in actis Concil. anno 2. Hen. 5. in Fin.

Henry 5, *Anno* 2. did the like as his Father, entring upon the Roll as an Ordinance in future, that the Treaſurer of *England*, or the *Exchequer* ſhall Annually make declaration of the ſtate of their Office, and the Revenue of the Realme, together with the charge of the Kings Houſe, Chamber, Wardrobe, Garriſons, Navy, and Debts.

Anno 3. *Henry* 5. the like Aſſignments were

were made proportionable to the Revenue which in the great Custome of Woolls, the petty Custome, Tunnage and Poundage, revenue of *Wales*, and the Dutchie of *Cornwall*, the Hamper, the accounts of Sheriffs, Escheators, the Exchange of *Bullion*, and the benefit of Wards and Marriage (then rated at but one thousand marks a-piece) rose not to above 56966. l. And being at such time as he undertook the Conquest of *France*. Ex rot. orig. an. 3 Hen. 5.

Anno 9. *Henry* 5. the revenue of the Kingdome amounting to 55743. l. 10. s. 10. d. was so by the King with advise of his Counsel ordered, as before. Ex ordinat. anno 9. Hen. 5.

And by this Record it appeareth, that that Clerks of the Navy, and not the Treasurer was the Officer only for that place.

Henry 6. *anno* 12. in Parliament, *Cromwell* then Treasurer, delivering up an Account of the *Exitus* and *introitus* of the Exchequer, setled the Estate of his expence, of which there was allowed for his house 16978. l. and to his Chamber and Wardrobe 2000 l. The rest to defray the debts and necessary occasions of the State. Hen. 6. Ex rot. Par. anno 12. Hen. 6. n. 24.

Queen Elizabeth anno 12. At which time besides the Wards and Dutchy of *Lancaster* the profit of the Kingdome was 188197. l. 4. s. the payments and assignments 110612. l. 13. s. of which the Houshold was 40000. l. privy Purse 2000. l. Admiralty 30000. l. which by an estimate 1. *May, anno* 1604. was 40000. l. And is now swolne Queen Eliz. Ex comp. Dñi Burghley Thesaur.

swolne to near 50000 *l.* yearly by the errour and abuse of Officers.

SEcondly, by abating and reforming the Excess,

1. Of Houshold.
2. Of Retinue and Favorites.
3. Of Gifts and Rewards.

First, for abating and reforming the Excess of Houshold, either,

by { Parliament / or / Councel Table.

1. *By Parliament.*

Edw. 2. Ex Angl. M. S. folio 29.

Anno 3. *Edward* 2. An Ordinance was made *pro hospitio Regis*, in ease of the people oppressed with Purveyance by reason of the greatness thereof; and the motive of that ordination was, *A l'honneur de Dieu, et a honneur, et profit de sainct Eglise, et a l'honneur de Roy et a son profit, et au profit de son peuple, selon droit et resonel serment que le dist nostre Signeur le Roy fist a son Coronement.* And about this time was the King's house new formed, and every Officer limited his charge and salary.

Ex libro. Do. Aula Regis.

Edw. 3. Rot. Parl. anno 36. Edw. 3

Anno 36. *Edward* 3. the houshold was reformed at the petition of the People.

Rich. 2. Rot. Parl. 1. Ric. 2.

Anno primo Richard 2. the houshold was brought to such moderation of expence, as may be answerable to the revenues of the Crown.

Crown. And a Commission granted at the Petition of the Commons to survey and abate the houshold; which not taking desired effect, *Anno* 5. the Commons petition that the excessive number of menial servants may be remedied, or otherwise the Realm will be utterly undone, and that his houshold might not exceed the ordinary revenues of the Realm.

Rot.Parlan. Rich.2.Rot.4. Parl.an.5.&6. Rich.2.

Anno 4. *Henry* 4. The People crave a reformation of the Kings house. And *Anno* 7. that he would dismiss some number of the retinue; since it was now more chargeable, but less honourable then his progenitors; and that the Antient Ordinances of the houshold, in ease of the people might be kept, and the Officers of the houshold sworn to put the ordinances and statutes in due execution, and so consider the just greifs of his subjects by unjust Purveyance contrary to the statute. That hereafter *vous poiez vivre le voz biens propres en ease de vostre peuple*, which the King willingly doth, as appeareth by an ordination in Councel, whereby the charge of the houshold is limited to 16000 Markes.

Hen. 4. Rot. Parl.an.4 7 & 11. Hen. 4.

Ex Ordinat. in Rot. Act. Concil.an.11. Hen. 4. marked in R

Annis 12. & 18. *Henry* 6. The charge of the Kings house is reduced to a certainty, and lessened by petition and order in Parliament,

Hen.6 Rot. Parlan. 2.18. Hen. 6.

Anno 12. *Edward* 4. The King promiseth to abate his houshold, and hereafter to live upon his own: So setling a new form

Edw.4 Ex. rot.Parl an. 12. Edw. 4.

Ex lib. ordin. Hospitii temp. Edw. 4.

his Court which is extant in many hands, intuled, *Ordinations for the Kings house.*

Rot. Par. an 27. Edw 3. 7. Hen. 4. n. 3. Mich. recep. 27 Hen. 6. n. 9.

And to ease the charge of the Kings house, the Queens have allowed a portion of their joynture suting to their own expence to the Treasurer of the household. Thus did *Philip* the wife of *Edward* 3. and likewise *Henry* 4. wife *anno* 7. And *Henry* 6. wife allowed 2000. l. a year out of her Estate.

2. *Excess of the houshold abated and reformed by the Councel-Table.*

Edw. 2. Ex Anla Regis fact. temp. Ed. 2.

Edward 2. caused his household to be certain in allowances, making thereof a book by way of ordinance, which is called *Aul. Regis.*

Hen. 4. Act. concil. 8. Hen. 4. marked P. P.

Henry 4. causeth his Son the Prince, and the rest of his Councel, to ordain such moderate governance of his house, that may continue *au plaisir de Dieu et du peuple.*

Hen. 6.

Henry 6. *anno* 27. reduced his charge of house to 12000. l. whereof 2000. l. was out of the Queens joynture.

Ed. 4. Ex lib. ord. tem. Ed. 4. Ordinat. Car Woolsey Hen. 8.

Edw. 4. *anno duodecimo* reformeth it again, and publisheth a book of orders for their better direction. Which after Cardinal *Woolsey* for the more honour and profit of the King amendeth, and that still remaineth the ground-work of the present government: Which being now so much corrupted, it may seem fit, either to put down

down the Tables, and leave all attendants to allowance of money, as *France* and *Spain* doth, or elſe by ſetting up the Hall again, reduce the houſhold to the beſt, firſt, and moſt magnificent order. So all things being ſpent in publique, will be to the Kings honour, and the ſecret waſte by Chamber, diet, and purloining, prevented to the Kings benefit. For there is never a back-door in Court that coſts not the King 2000. l. yearly, and few mean houſes in *Weſtminſter*, that are not maintained with food and firing, by the ſtealth of their Court-Inſtruments.

By abating and reforming the exceſs of Retinue and favorites.

Thus did *Henry* 2. with *William de Ipre* Earl of *Kent*, a *Netherlander*, and all his Countreymen and followers, when they grew heavy and a burthen to this State, unable to foſter more then her own natural children. Hen. 2. Ex Gerval. Doro. bern.

Thus *Richard* 1. did with *Otho* Earl of *York*, and all the *Bavarians*, although he was the ſonne of his Siſter, taking from him that Earldome, for that the People oppoſed it, and giving him in exchange the title of *Poictife*. Rich. 1. Ex Richardo canonico in vita Rich. 1.

Thus *Henry* 3. did with his half-brethren the Earl of *Pembroke*, and the Biſhop of *Winchester*, and all the *Poictons* their followers. Hen. 3. ex lib. Sect. Albani & Wil. Riſhang. & lit. Baron. Papæ.

Thus

Edw. 2. Ex ordina. 3 Ed. 2. in li. legum manuscript fol. 285.

Thus did *Edward* 2. by this Ordinance, *Que tout le lignage Sire Pieres de Gavestone soit entirement ouste de estre entoines le Roy et de son service. Item Burgois de Til soit ouste et son fias que est mereschal del' Eschequer. Item que Bertram Assabi et son Frere et ceux de Gascoigne, et Aimyrick de Friscombe and soint oustre et ses terres prises en le main le Roy.*

Rich. 2. Ex rot. Parl. an. 10. Rich. 2.

Thus *Richard* 2. did with the *Bohemians anno* 10. by an Act of Parliament at the petition of the people surcharged.

He. 4. Ex rot. Par. an. 7. & 12. Hen. 4.

Thus *Henry* 4. did likewise with the *Gascoignes* and *Welch* overburthening and impoverishing the King and Realm with perpetual suits, so that in Courts (as the Record saith) there were *ne ad mill substanc des personnes vaylantes et suffesants: Si Besoigne seroit mes de Rascaile pur la grendre part.*

By abating and reforming the excess of Gifts and Rewards.

Rich. 2. Rot. Par. an 21. Ri 2. an. 4 & 5. Hen. 4. n 9.

Hence was it that the wisdome of former time, foreseeing the mischief that the open hand of the Soveraign may bring, the State made a Law 21. *Richard* 2. that whatsoever cometh to the King by Judgement, Escheate, Forfeiture, Wardship, or any other wayes, shall not be given away, and that the procurer of any gift, shall be punished.

Hen. 4. Rot. Par. an. 7. H. 4.

This the Parliament continued 7. *Henry* 4. until the King were out of debt, making frustrate the grant, and ordaining a penalty

nalty of double value to every mover or procurer of any ſuch.

The like *anno* 11. *Henry* 4. And that no petition for any thing ſhould be delivered the King, but in the preſence of the Councel, who might examine it, leaſt the King's wants ſhould light upon the Commons. Rot.Par.ann. 11.H.4.n.13.

And to keep the hand of *Henry* 6. from waſteful giving, the Councel induced him to convey to the Arch Biſhop of *Canterbury* and others, all profits, by Wards, marriages, reliefs, eſcheats and forfeitures, to defray the charge of his houſe. Hen.6.Parl. Parl.2.an. 25. Hen.6. m. 24.

It is one of the greateſt accuſations againſt the Duke of *Somerſet*, for ſuffering the King to give away the poſſeſſions and profits of the Crown in manner of a ſpoil: for ſo are the words of the Record. Ex rot. Parl. an.28.Hen. 6.

And it was made the firſt and cheifeſt Article to depoſe *Richard* 2. for waſting and beſtowing the lands and revenues of the Crown upon unworthy perſons, and thereby over-charging the Commons by exaction. Rich. 2. Ex rot. Par. an.1. Hen. 4.

THirdly, Raiſing of money, and improving the Revenues of the *Crown*.

Either by the { Grant of the Subject, / Or / Power abſolute in the Soveraign.

1. Grant

1. Grant of the Subject, which is { General, as in Parliaments, Or Particular by Lones { Compulsive Or Benevolent.

Ex lib. rub. in Secto.

General, as in Parliaments, wherein they give the King part of their own, by way of Retribution only; as

For Defence of the State.

Ex Jo. Everſden. Ex hiſt. Roſſenſ. Ex rot. Parl. temp. Ed. 3. Ex rot. Par. annis. 2, 3, 5. Rich. 2. Rot. Parl. 8, 9. Hen. 4.

Hence grew the *Scutage* granted to *Hen.* 2. *Richard* 1. *John*, and *Henry* 3. to *Edward* 1. divers Fifteens and Tenths for his wars againſt the *Scots* and *Welſhmen*. The Subſidie of Woolls and other Contributions to *Edward* 3. for his Wars: And the like granted to *Richard* 2. *annis* 2. 3. 7. ſo they may be imployed in the Wars: and particular Treaſurers to accompt in Parliament. So in the 8. and 9. of *Henry* 4. on the like condition.

Ex Rot. Parl. an. 13. Hen 4. & 1. Hen. 5.

Tunnage and Poundage begun the 45. *Edward* 3. had hence its original; and therefore 13. *Henry* 4. and 1. *Henry* 5. they are granted ſo in expreſs words; and that they proceed of good-will, and not of duty. Preſidents of this nature are plentifull in all the Rolls.

For maintenance of Religion and the Church.

As in the Year 1166. to *Henry* 2. was given

given twelve pence in the pound: and in the 18. *Edward* 1. a fifteenth was granted to expel the Jews. And *Anno* 4. *Richard* 2. a tenth of the Clergie, and a fifteenth of the Commons, for his help to ſuppreſs the *Wicklivian* hereſie.

Ex Benedict. Monacho in vita Hen. 2. Ex Adam. Merioneth ex Rot. Par. anno 4. Rich. 2.

For ſupport of the Laws and liberty of the Common-Wealth.

So did the State to *Henry* 3. *anno* 27. for confirmation of the great *Charter*, for the like *anno* 15. was granted 29. *Edward* 1. and 13. *Edward* 3. and 7. *Henry* 4. That the Laws may be executed againſt Purveiors.

Ex Rad. cogſhal. Ex hiſt. Roſſen. Rot. Par. an. 23. 3 & 7. Hen. 4. Ed. 1. 13. Ed.

For redreſs of the Agrievances.

As in the 15. *Edward* 3. ſo that the King would perform their petitions, or elſe they held themſelves not bound to pay the ninth they had given.

Rot. Par. anno 15. Ed. 3. n. 16.

The like was the 7, 8, 9, 10. and 11. *Richard* 2. The 10. and 15. granted the 4. and 7. of *Henry* 5. is upon condition, that the King laid no impoſitions upon the State. And 7. *Edward* 4. the State releiveth the King, ſo he will promiſe to live hereafter upon his own, and not burthen the State, the which he there proteſteth to perform.

Ex rot. Par. an. 7 8, 9, 10. 11. Rich. 2. Ex rot. Par. an. 4. & 7 Hen. 5. rot. Par. 7. Edw. 4.

And it is to be obſerved that to improve the grants of Subſidies to the extreameſt value

Ex original. an. 3 Rich. 2.

value, there were new Commissioners appointed to survey and advance mens fortunes above the estimate of the former taxes, and Commissions have been granted out, as 3. *Richard* 2.

Or to enable him out of his own by an Act of Resumption of Lands, offices, annuities.

Rot. ordinat. an. 5. & clauf. an 9 & 10. Edw. 2.

Thus did *Henry* 3. *anno* 6. and *Edward* 2. *anno* 5. to 9. & 10. by an ordination of the Prelates, Earles and Barons.

Rot. Par. an. 1. Rich. 2. Rot. Parl. an. 1, 2, & 6. Hen. 4.

All grants made by *Edward* 3. to unworthy persons, *Richard* 2. resumed *anno prim.* and by *Henry* 4. *anno.* 6.

All Pattents for life or years since 4. *Edward* 3. were resumed.

Ex Rot. Par. an. 1. & 2. Hen. 5.

At the petition of the people *Hen.* 5. revokes all grants out of the principality made to unworthy persons, and all annuities out of the customes of wools, deducting out 10000. l. a yeare out of all other annual pensions ratably, leaving the remain, if any, to the Pattentees.

Rot Par. anno 28, 29, 33. Hen. 6.

Hen 6. *annis* 28. 29. 33. resumeth in *England* all Lands, offices, liberties and grants from *annis primo*, and the like *anno* 21. in *Ireland*.

Ex act. Conf. an. 21. Hen. 6. Rot. Par. an. 2 Hen. 7.

So did *Edward* 4 *annis* 4. 7. 12. And *Henry* 7. *anno* 2. resumed all grants made by *Edward* 4. or *Richard* 3.

Parti-

Particular by { Lones Or Benevolences. } { Voluntary, Or *Compulſive.*

Firſt upon Lones voluntary, as upon aſſurance of Bond of the Nobility.

So was *William de la Poole* bound for *Edward* 3. *anno* 13. in great ſummes, and the Duke of *Glocester anno* 20. *Henry* 6. and the Cardinal pawned his ſilver Veſſels for *Henry* 6. debt. Rot. Parl. an. 13 Ed. 3. act. concil. 20. 22 Hen. 6.

Upon pawn of Jewels.

Thus did *Henry* 3. *anno* 26. to the Archbiſhop of *York*, and when his own were at gage, he took *Aurum et Jocalia færetri ſancti Edwardi Confeſſor.* and pawned them. Clauſ. an. 26. Hen. 3.

Edward 1. imployed one *Andevar ad jocalia ſua impignoranda.* Clau. 29. Ed. 1.

Edward 2. pawned his Jewels to the Lord *Beaumont.* Rot. fran. an. 9. Edw. 2.

Edward 3. pawned *Magnam Coronam Angliæ* to Sir *John Weſſingham for* 8. *years.* Comune inſc. 30 Edw. 3.

Richard 2. pawned *vaſa aurea et diverſa jocalia* to Sir *Robert Knolls.* Parl. anno 7. Rich. 2.

Henry 4. *Invadiavit tabellam et treſellas ſuas argenteas de Hiſpania.*

Henry 5. pawned his great Crown to the rich Biſhop of *Wincheſter.* Parl. anno 5. Hen. 5.

Henry 6. to the ſame man then Cardinal pawned Par. an. 10. 12. 19. Hen. 6.

pawned many parcels of his Jewels in the 10, 12. and 29. of his reign, and the like to many others.

And the late Queen to eaſe her people did the like with her Jewels in the Tower, beſides the often morgage of her land.

Lones voluntary upon Aſſignments of Cuſtomes and Subſidies.

Act. concil. an. 22. Hen. 6.

So did Cardinal *Beauford* lend 10000. l. to *Henry* 6. *anno* 22. upon ſecurity of the Cuſtomes of *London* and *Southampton*, the King indenting to turn the courſe of moſt trade thither. And *Henry* 6. *anno* 15. and *Edward* 4. *anno* 12. did ſecure their debts by aſſignment over of the next Subſidie or aide that ſhall be granted from the Church or Laity to them, being a deviſe in truth to draw on a ſupply the ſooner from the State.

Ex bills ſign. an. 15 Hen. 6. & 12. Edw. 4.

Lones voluntary upon the Great Seal or the Privy Seal.

The Great Seal, under which they ſhould have without paying Fee a Patent ſealed for repayment of their dues by a day certain.

Rot. original. an. 31. Hen. 4. marked B. B.

The Privy Seal, which is of late the moſt in uſe; and it is worthy of obſervation to ſee the willingneſs of former times in reſpect of theſe.

In the 13. of *Henry* 4. there is a Roll intituled

Rot. act. conc. 13. Hen. 4.

intituled *les nomes de ceux que ont da preſter au Roy les ſommes eſcrits*. The Arch-biſhop of *Canterbury* lent 1000. Marks, the Biſhop of *Lincoln* as much, the Biſhop of *Norwich* 600. l. the Biſhop of *London* 500. Markes, the Biſhop of *Bath* 400 Marks, the Lord Privy Seal 200. l. the Clerks of the *Chancery* 1000. Markes.

Rot. aſſ. con. cil. 13. Hen. 4.

Particular Grants of the Subject by Lone compulſive.

So were the Merchants of *Florence*, *Venice* and *Luke*, compelled by an order in Councel 3. *Henry* 3. becauſe they had by *grace et ſufferance du Roy graunts, priviledges et reportants grand lucre pour le exerciſe de leur Merchandre en le Angle terre*, And the perſons that refuſed to lend were committed to the Fleet, neither were the *Engliſh* more free, in *anno* 30. *Henry* 6. divers being enjoyned to attend the Councel-table, or elſe to pay the demanded Lone.

Ex ordinat. Concil. an. 3. Hen. 5. marked N. N.

In the time of *Henry* 8. *anno* 14. of his Reign he exacteth by way of Lone, ten pounds in the hundred of all goods, jewels, utenſils and land, and according to the extreameſt rate revealed by Oath of the poſſeſſors. Notwithſtanding there is a Law 2. *Richard* 2. that none ſhall be denyed in demand of any Lone, his reaſonable excuſe.

Ex inſtruc. Commiſ. 14. Hen 8. Rot. Parl 12. Rich. 2.

Particular Grants of the ſubjects by contribution or Benevolent gifts.

Ex Charta Epiſcop. Cant. Ro. clauſ. 29 Edw. 1. clauſ. 35. Edw. 3

Theſe were of old uſual and free, and therefore called *Liberalitas populi*, by *Richard* 1. And *Curialitas*, by *Ed* 1. *Ed* 3. *Henry* 4. and *Henry* 5. confeſſed to proceed *ex ſpontane voluntate, nec de jure vendicare poteſt*. Yet did *Henry* 6. *anno* 20. in an inſtruction to Commiſſioners imployed in procuring a *Benevolence*, ſay, that for ſo much as by the Law he might compel all his Subjects, and at their own charge to attend his; yet he was contented to ſpare ſuch as would but contribute aſmuch after his degree and reputation as two days in his perſonal ſervice would ſtand him in, thereby implying a neceſſity in them to give, to eſcape a further expence.

Ex inſtruct. original. 20. Hen. 6.

Ex act. Parl. an. 3. Mariæ.

This Law, upon which *Henry* 6: grounded himſelf, was by a Statute in Queen *Maries* time repealed. And that ſince repealed this laſt year, hath made a reviving of the former, whereby the King is readmitted into his old advantages, and the ſubject in the former miſchief. And *Henry* 8. *anno* 17. Although he entituleth the *benevolence* he ſought with no other ſtile then an amicable grant, yet he threatened the refuſers with convention before his Councel, impriſonment, and confiſcation of Goods.

Ex inſtructione original. 17. Hen. 8.

The

THe Kings raise money, and improve the revenues of the Crown,

By power absolute in the Soveraign, in disposing, { 1. Lands, 2. Merchandize. 3. Regalities.

1. Lands, as by selling; which hath been often and old, if they were not of the Antient demeasne-land, which our forefathers held impious to alienate from the *Crown*, and those were such Lands as go under the title of *Terra Regis*, in the Book of Domesday, and were the Lands of *Edward confessor*: of other Lands I never observed question, neither do ever find that Acts of Resumptions ever reached to Lands that were sold for valuable consideration. Lib. Domesday.

By passing in Fee-farm, except places of the Kings Residence, Parks, spacious Wastes or Forrests, all the Lands of the the Crown, which remain either in the annexation, custody lands, or Queens jointure, and exceed not yearly 32000. l. These, although largely estated out in several natures, some for lives, some for years, will one with the other be advanced to a treble rent, which amounting to 96000. l. leaving an annual improvement of 64000. And if the offer be not made restrictive for the new Tenant, there is no doubt but his Majesty shall find ready and hearty undertakers amongst the Gentry and Nobility too, who have any place of

Reſidence neer any his Majeſties Mannors; and the Kings ſecurity the better, ſince their abilities will ſettle the Fee-farm rent upon more Land then the purchaſe.

If any ſhall object againſt this, a loſs by Fines and Profits of Courts, a prejudice in not ſerving neceſſity (as of late) by ſales or diminution of Regalities in ſeiſure of ſo many Royalities. It may be anſwered to the firſt, that the caſual profits of Courts never defrayed to the preſent Officers their fees and expences; and this appeareth from a collection made the 44. year of the late Queen, where the total iſſue of ſuch certain charge exceeded the receipt of ſuch chances above 8000. l.

To the ſecond, if looking upon the ſeveral rates of the Kings Lands, expoſed to Fee-farm ſales, we find ſome at 50. other at 21. years as to the late contracters, and make out of theſe extreams a *medium* of the largeſt 40. years, and ſet on the other ſide the Common and current eſtimate for dead Rents 15. years purchaſe: We muſt find, that 50 l. Land ſold un-improved reſpectively to the like trebled by a Fee-farm, will be 250. l. loſs to his Majeſty in the ſale. As for Regalities, though it may adde ſomewhat to a Subject, in increaſing ſuch his petty command, it can nothing to a Soveraign, whoſe tranſcendent power drown'd in it all ſuch ſubordinate dependances & regards. But if we conſider beſides the former improvement, the increaſe of caſual

casual advantage, and diminution of certain charge, we shall have just cause not to continue this course; for if the Commissioners in this business, may be ordered by instruction to reserve upon every Manor of above 30. *per Annum*, a tenure in Knight-service by half a Fee, and of above 50. l. in Capite by an intire Fee, and of the purchase to pay his Rent into the receipt himself half yearly, and strike there his Tally: the former will advance the revenue accidental of the Crown in Wardships, *primier seisin*, alienation and aides; and the latter cut off at once so many their unnecessary Receivers, Auditors, Stewards, Bayliffs and Clerks, as stand the King in yearly above 12000. l. As for other dues or casual Revenues, which now fall under the charge of these Officers, the Collection and payment may be as it hath been with the rest from the time of *Henry* 2. until of late dayes laid on the Sheriffs of the Shire, and all the accounts left to the 2. Auditors of the press to draw up, and Clerk of the Pipe to enter in *Magno rotulo* as in former time, for it must seem strange to all men of judgement, that it should be with those Officers (who had their beginning but since the 25. year of *Henry* 8. by addition of his new revenue of 150000. l. from the suppressed Monasteries) otherwise then with all things in nature, and reason, *Cessante Causa cessat effectus*, not to be discontinued, when as all Crown-annexed

lands that gave them their just imployment, are for the most part passed from the Soveraign into the subjects possession.

Besides this of the general disposing in Fee-farm, there hath been a project in particular to infranchise the Copy-holders in the several Mannors, which I should hold to be of more prejudice to his Majesty then the others, bringing with it all the former *inconveniences*, loss of Fines, Regalities, and advantages of sale, and being without many of the advantages, as Wardships, *Primiers Seisein*, alienation and aids; for no man will buy quillets but in soccage, and discontinuance of Officers, who must still remain, though they can bring the King but little benefit.

Kings raise money, and improve their Revenues, by Farming out for years, Lands, casualties, or wastes.

Rot. Parl. an. 7. Hen. 4. As in the 7. *Henry*. 4. the State held it more just to help the King out of his own, then to burthen the Common-Wealth, and therefore gave way by Parliament to the King to improve up his Lands, though in Lease provided that the Leassee should have refusal of the bargain if he would.

Rot. fin. an. 2. Edw. 2.

Rot. Parl. an. 15. Edw. 2. *Edward* 1. *anno* 2. granted a commission to farm out all such wastes, *Quod absque injuria alterius fieri potest*. And in *anno* 15. asserted a great part of his Woods for rent, and disforrested in most Counties of *England*

land for a summe of money they gave him.

And it was not the least of charitable thrift in the King, to reduce much of his waste to habitation of Christians, especially the remote Forrests, which would increase many thousand Families for his service, and bring many thousand pounds to his Coffers. Rot.claus.an. 7. Edw. 2.

But in the carriage of this business there must be much caution to prevent commotion, for in them there are many that have right of common *sans nombre*. And the resolution in agreement with them must be suddain, and confident, for multitudes are jealous and inconstant. And the instruments to effect this, must be such as are neighbours, interessed and popular, not strangers; And the first demise to the inhabitants, and at under and easie values.

Kings raise money, and improve the Revennues of their Crown, by manuring of Lands.

Thus did *Henry* 3. *anno* 13. in removing out of most of his Parks as *Gillingham*, *Brigstock*, *Cliff*, *Woodstock*, *Haverel*, &c. all mens Cattle *pro bobus*, *pro Lardaria Regis in Parcis prædictis impinguendis*. Rot.claus.an. 13 Hen. 3. memb. 10.

And *Edward* 1. commanded all the Escheators in England. *Excolere, seminare & appropriare ad maximum Regis proficuum omnes terras, quæ regi & coronæ suæ devenerint* Rot. fin. 2 & 3 Edw. 1.

per mortem aliquorum vocationem Episcopatium, &c.

Kings raise money and improve the Revenues of their Crown

By Merchandise { 1. *Trading themselves.* 2. *Licencing others to trade in Commodities,* } *Lawful Or unlawful.* 3. *Improving Customes.*

1. *Trading themselves.*

Rot. Valcon. 22. Edw. 1. Thus did *Edward* 1. *anno* 22. seise into his hands all the Wools in the Kingdome, as the Merchants were lading them in the Ports, giving them security of payment at a long day, and a short price, and then transporting them to his own best and readiest sale.

Rot. Almaig. 12. Edw. 3. Thus did *Edward* 3. *anno* 12. with all the Tin.

Act Concil. an. 20. Hen. 6. And *Henry* 6. *anno* 20. by advice of his Councel took up by way of purveyance great store of Grain, and transported it into *Gascoigne*, where by reason of a dearth, the price was extream. In *anno* 31. he arrested all the Tin in *Southampton*, and sold it to his own present use: and in the year following using the advantage of the Statute, which bound all men to trade the staple Commodities to no other place but *Callice*, vented himself many Sacks of Wool

to

to other Ports of better advantage.

And the late Queen *anno* 1567. cauſeth by warrant of Privy Seal a great proportion of Beer to be purveyed, tranſported and ſold to her uſe beyond the Seas. Warrant. ſub privat. ſigill. an. 9 Eliz. Reginæ.

KIngs raiſe money and improve the Revenue of their Crown

By licencing others to trade { Lawful / Or / Unlawful. } Commodities.

1. *Lawfully, but ſolely.*

Thus did *Henry* 6. by approbation of Parliament, with all the trade of *Allome*, for two years granted to the Merchants of *Southampton* for 8000. l. And again for the like ſum to thoſe of *Genoway*. Rot. Parl an. 29. Hen. 6. n. 15.

2. *Unlawful or Prohibited.*

Thus did many of the Kings, (after ſuch time as the heavy burthen of impoſition began in the miſerable neceſſity of *Henry* 3. called then by no better name then *Maltolt*) and continued until the 15. year of *Richard* 2. by divers intermiſſions, for then I find the laſt petition of many in Parliament againſt it, was altogether taken away. For when *Richard* 2. and his Succeſſors found the Revenue leſſened, by the importunate cry of their People, whereby im- Rot. claus. an. 19. Hen. 3. Rot. Parl. 15. Rich. 2.

impoſitions were laid aſide, they began to adviſe another ſupply out of the unbounded power of ſuppoſed prerogative, and finding a greedy deſire of one Merchant to prevent another of his market (reſtrained by that Act or *Statute*, which tyed them to one time, and to one Port *Callaice*, for all ſtaple commodities) they uſed to ſell Licences with a clauſe of *Non obſtante* of any ſtatute, whereby they diſpenſed with multitudes, to trade with what commodities and to what places they would.

Ex bills ſignat. an. 20. Rich. 2.

To the Merchants of *Newcaſtle Richard* 2. gave leave to carry wool-fells &c. to any other Port beſides *Callaice*, upon condition that they ſhould pay for them Cuſtome and Subſidie according *Le ſage diſcretion de vouz, ou de voſtre ſage Counceil.*

To diverſe Citizens of *London*, *Henry* 4. in the like ſort diſpenceth for great quantity of Tinne for ſeven years, paying 400. l. yearly above the uſual Cuſtome.

Ex petit. an. 5. Hen. 6.

Henry 6. *annis* 5. 21. 30. reneweth to the Town of *Newcaſtle* the ſame licence they had *anno* 20. *Richard* 2. and granteth 600. ſacks of Wool to *Benedict Benoni* Merchant of *Florence*, with *non obſtante* any ſtatute or reſtraint: In this year ſuch Licences were ſo frequent, that the Town of *Callaice* complained in Parliament of their decay thereby; yet without relief as it ſeemeth. For the ſame King *anno* 36. giveth leave to *Lawrence Barbarico* to tranſport from *London* to *Ciceſter* 12000. ſacks of Wool to

Ex act. Concil.

what

what Ports he liſt: And *Edward* 4. *anno* 10, borrowing 12000, l. of divers Merchants, permitteth them *non obſtante* any Law to carry any ſtaple commodities to the *Straits* of *Morocco* until they were ſatisfied their ſum. Ex billa originall. an. 10. Edw. 4.

Henry the 7. raiſeth much money, by giving leave to many Merchants to trade inward and outward Commodities prohibited, as to *Alonſo de Burgues* great proportions of Ode *Anno* 6. and to a multitude of others all kind of grain and other forbidden things, as in *annis* 20, 21, 22. Ex lib. comp. inter Hen. 7. & Dudley.

KIngs raiſe money and improve the Revenues of the Crown, by improving cuſtomes.

By { 1. Farming out of Ships. 2. Raiſing the book of Rates. 3. Farming the Cuſtomes.

1. *Farming out of Ships.*

To the Merchants, and taking ſecurity of them, either to bring in or carry out yearly aſmuch Commodities, as ſhall yield the King in Cuſtomes the ſum agreed on, or elſe to make it up out of their own money.

Thus did *Henry* 7. many years, not only with his Ships, but with divers ſtocks of money. Ex lib. Hen. 7.

2. *Raiſing*

2. *Raising the Book of Rates.*

Rot. Alin aign. 3. Edw. 3 Rot. clauſ. 29. Ed. 1. Extract. Bruxelles.

This was in ſome ſort done *Conſenſu Mercatorum* by *Edward* 1. and *Edward* 3. and again in *Henry* 8. time, of which the houſe of *Burgundie* complained, as againſt the treaty of entercourſe; and of late ſo ſtretched, as it is feared it will prove the overthrow of trade: neither do I find this courſe at any other time.

As a branch of this, may aptly fall out the benefit Princes made by a prerogative power of impoſing inward and outward udon Commodities, over and above the antient Cuſtome of Subſidie. The firſt that uſed this courſe after the Statute was ſettled, from a King of voluntary government after the Conqueſt (when as Kings ruled more by the edge of the Sword then by rule of Law) was *Henry* 3. about the entrance of his Reign; But finding it to be an apparent overthrow of Commerce and Trade, and againſt the great Charter; made proclamation *anno* 16. in all Ports of *England* that all Merchants might come *faciendo rectas et debitas conſuetudines, nec ſibi timeant de malis toltis*, for it had no better name then *Maletolts*.

Magna Charta 30.

Dor. clau. an. 16. Hen. 3. m. 20.

Some impoſitions being laid by *Edward* 1. he in *anno* 25. taketh them away, with promiſe that neither he nor his Succeſſors ſhould do any ſuch thing without aſſent of the Parliament, granting in *anno* 31. to the Merchants many immunities, as releaſe

Statut. an 25. Ed. 1.

Rot. Parl. 31. Edw. 1. cap. 1. & 2.

of

of priſage, for which they requite him with ſome increaſe of Cuſtomes, but not as impoſed by his own power: For he in *anno* 34. declareth that no tallage or aide ſhould be levied without the aſſent of Parliament, nor nothing to be taken of Woolls by colour of *Maletolt*.

In *Edward* 2. time, it appeareth that levying of new Cuſtomes and raiſing of old, was the deſtruction of Traffique, and therefore repealeth all *Maletoltes*, only in *anno* 11, 12. taketh by way of Lone, and with leave of the Merchants, ſome former increaſe upon Wools, aſcribing nothing to any ſupream power to impoſe. Rot. clauſ. an. 11. Edw. 2.

The like did *Ed.* the 3. *anno* 1. confirming in *anno* 2. the great *Charter* for free traffique: but having about *anno quinto* granted certain Commiſſions for a new kind of raiſing tallage, the People complained the year following, whereupon he repealed the ſaid Commiſſions, and promiſeth never to aſſeſs any, but as in time of his Anceſtors. After in *anno* 11. by reaſon of a Statute then made (reſtraining all men upon pain of death for tranſporting any Wools without licence from the King and Councel) *Edward* the third made great advantage by ſelling of Diſpenſations of that Law, and grounded upon it many impoſitions; but it grew ſo heavy upon the People, that their diſcontentments ſo far increaſed, that the King was enforced to cauſe the Arch-biſhop of *Conterbury* to perſwade Rot. fin. 1. Ed. 3. Statute 2. Ed. 3. cap. 9. Rot Par. 6 Ed. 3. tat. 11. Ed. 3. cap. 1. Ro. Almaign. 12. Edw. 3. memb. 22. indors.

swade them to patience by his Godly exhortations, yet notwithstanding he continued by gentle intermissions the advantage he had by that late *undecimo*, taking an improvement of Custome for opening the passage that thereby was shut in *anno* 13. until the same year the State made purchase of their former freedome, and discharge of the *Malotolt*, by granting the tenth sheafe and fleece &c.

Stat. 1. Ed. 3. Rot. Parl. 1. Edw. 3. Stat. 14. Edw. 3.

And thus it continued all his reign, being a time of great necessity and expence by reason of his Wars, he sometimes taking an advantage either to raise an imposition, or else to gain aide from the People in discharge thereof, they continually urging the injury in barring them their birth-right: And the King on the other side the greatness of his own occasions, and it may be gathered by Record, that thus it held on until the 15. *Richard* 2. in which year is the last petition against impositions, generally grounded in likelyhood from the Kings power in restraining or permitting trade all the time after; though licences with *non obstante* were ordinary, yet were they to private persons and for particular proportions of Commodities, whereby the Kings succeeding raised no less benefit then by sale of any general permission. To this of imposition I may add the rule I find, *anno* 12. *Henry* 6. made in Councel, that the value of all goods for the payment Subsidie, shall be rated

Licencegranted by Henry 4. Henry 5. Henry 6. to many Merchants with *non obstante* any statute.

Ordinat. Concil. an. 12. Hen. 6.

rated of Commodities domestique as they may be sold between Merchant and Merchant: And if forreign, then so it shall appear upon Oath of the Merchant or his Factor, they stood them in at the first; and the general *Maxime* which limits all regall advantage upon trade of Merchants is, *ut Causa honesta sit et necessaria, ratio facilis, tempus idoneum.* Merchants.

3. *Farming out of Customes.*

So did *Edward* 3. with the new and old Customes at *London* for 1000. Markes monethly to be paid unto the Wardrobe. The like he did *anno* 17. Clau. anno. 5. Edw. 3. Original. 17. Edw. 3 rot. 2.

Richard 2. *anno* 20. letteth out for term of life the Subsidie of Cloth in divers Countries.

And *Edward* 4. *anno* 1. the subsidie and usuage of Cloth.

Thus did *Henry* 8. with his Customes, and since his time, the late Queen, and our now Soveraign Master; and it was so then in use in the best governed State *Rome*, which let out portions and *decim's* to the *Publicans*.

KIngs raise money, and improve the Revenues of the Crown.

By Regalities; 1. Temporal, as for { Liberties. Penalties of Lawes, Letters of Favour. } Or 2. Mixt.

Liberties.

In granting, restraining or renewing *them*. It is a course usual, that Kings have raised in money by calling in question the Charters and Liberties of Corporations, Leets, Free-Warrens, and other Royalties.

Ex Rad. cogshal. Thus did *Richard* 1. proclaiming, *Quod omnes chartæ et confirmationes, quæ prioris sigilli impressione roboraverint, irritæ forent nisi posteriori sigillo roborentur.*

And *Henry* 3. *anno* 10. enjoyned all *qui suis valebant Libertatibus gaudere, ut innovarent chartas suas de novo Regis sigillo*, getting money thereby.

Rot. Ragman. an. 7 Ed. 7. Rot. Quo warranto 8. Ed. 3. *Edward* 1. by divers Commissions with articles (called *Articuli de Ragman*) annexed to them, called in *question* about *anno* 70. all the liberties and freedomes of *England*; *Gilbert de Thorneton* his Attorney putting information by *Quo warranto* against all persons, as well bodies Politick as others; whereby they were inforced anew to renew their Charters and Fines for their Liberties.

Rot. *Warranto* 13 Edw. 3. The like was in *anno* 13. *Edward* 3. in whose time *anno* 9. all clauses of allowances by Charter of Amerciaments, Fines, *&c.* imposed by the Kings Ministers upon any of the Tenants, of other men were adjudged

judged void, and the penalties made payable to the Kings Officers, unleſs they made a new purchaſe of their Liberties. And this was one of the uſualeſt and eaſieſt meanes to raiſe money from the People; becauſe it lighteth onely upon the beſt abilities. And if there were now but 20.l. taken of every Corporation; of every perſon that holdeth by Charter his Liberties 5.l. for renewing them: and of every one that claimeth by preſcription 10.l. for purchaſe of a Charter, all which would be eaſie and acceptable, it would amount to above 100000. l.

For penal Lawes that have been ſometimes but with ill ſucceſs wrought upon.

When *Richard* 2. *anno* 22. began this courſe, appointing in all his Commiſſions and inſtructions, *Buſhey* onely to be of the *Quorum* for compounding with the Delinquents, it wrought in the affection of his People ſuch diſtaſte, that it grew the death of the one, and depoſition of the other. Inſtructio original. 22. Rich. 2.

No leſs fatal was the like to *Empſon*: and there is no ſtring will ſooner jarre in the Common-Wealth then this, if it be generally touched. Proceſs con. Dudley an. 1. Hen. 8.

For Letters of Favour.

Either for mitigation or diſpatch of Juſtice.

Of the firſt ſort there be many found

in *Henry* 6. and *Edward* 4. time, ſometimes of protection, although by courſe of the Common Law none are warrantable but to ſuch as are going in *obſequium Regis*, or *ibidem moraturi*, ſometimes freeing men from Arreſts by calling them up to appear before the Kings Councel: Sometimes in cauſes highly criminal releiving the Priſoner, in commanding the Judges to make ſtay of all proceeding upon ſuppoſal of indirect practiſes until the King was better informed.

Lib. aquitanc. inter Hen. 7. & Dudley.

Of the ſecond ſort there are many in *Henry* 7. time, where the King hath taken money for writing to the Judges of Aſſize his Letters of Favour.

For Offices.

Thus did King *John* with the Chancellor-ſhip, ſelling it for term of life to *Gray* for 5000. Markes: divers offices now in the gift of the Maſter of the Rolls were engaged to the Chancellour and Treaſurer of *England*, as are to be found in Record of *Henry* 4. *Henry* 5. and *Henry* 6. to be paſſed by warrant of the Kings hand, and upon ſome conſideration. And *Henry* 7. renewed this courſe, uſing *Dudley* as his inſtrument to compound with Suitors of thoſe and any other places.

And by that Record we find the Chancellor, the Chief Juſtice, the Keepers of moſt of the Records, the Clerks of the Aſſizes

Assizes and Peace, the Masters of his Game and Parks, and what else carrying either profit or reputation, paid to the King some proportion of *money* for their places. Neither is this different from the course of other States. For in *France Lewis* 12. called the Father of his Country, did so with all Offices not being of *Judicature*, which his Successors did not forbear. In *Spain* it is usual, and *Vasqui* the *Spanish* Advocate defendeth the lawfulness of it: And *Charles* the fifth prescribeth it to his Son, as a rule in his last instruction, drawing his ground of reason and conveniency, from the example and practise of the *See* at *Rome*. The like might be of all inferiour promotions that are or may be in the Kings gift, whether Ecclesiastical or Temporal, if they were after the true value in profit and reputation listed into rankes, according to the several natures of their imployments respectively.

Emilius in vita Lewis 12.

Vas. cap. 40. ex instructione Caroli 5. to Phil. 2.

For Honours.

And that either by Power legal or Election.

Of the first it is only in respect of Land, whereby every man is to fine when the King shall require, that hath ability to be made a Knight and is not, of this sort there be plenty of Examples.

The other out of choise and Grace, as *Hugo de Putiaco* Bishop of *Durham*, was by

King *Richard* 1. created Earl of *Northumberland* for a great ſum of money: And I doubt not but many of theſe times would ſet their ambition at as high a price. And for his Majeſty now to make a degree of honour hereditary, as Barronets, next under Barons, and grant them in tail, taking of every one 1000. l. in fine, it would raiſe with eaſe 100000. l. and by a judicious election be a meanes to content thoſe worthy perſons in the Common-Wealth that by the confuſed admiſſion of many Knights of the *Bath* held themſelves all this time diſgraced.

For the Coine and Bullion.

By which although ſome Kings out of a laſt ſhift, have ſeemed to relieve themſelves, yet was it in truth full of *danger* and diſtruſt to the Common-wealth; being an aſſured token of a bankrupt ſtate: and to the Prince in concluſion, of moſt diſadvantage. For the Revenues of the Crown being commonly incertain Rents, they muſt in true value, howſoever in verbal ſound, be abated to the proportion that the Money ſhall be abaſed. And every man will rate his Commodity in Sale, not according to the accompt of pence or pounds, but to the weight of pure Silver contained in the currant money. As for example, That which was before the decrying of the Coine worth five ſhillings

the

the pound weight, will (if the allay be to the half) be held at ten shillings; and so in every proportion respectively. For money is not meerly to be esteemed in respect of the Sculpture or Figure, but it must value *in perenni a quantum in massa*: And Silver is a Commodity as other Wares, and therefore holdeth his estimation as they do according to the goodness. And the Lord Treasurer *Burleigh* in *Anno* 1561. when the currant of State-Councel affected an abasement of Coine, after a grave deliberation advised the *Queen* from it, and never would give way to any such resolution in his time. But that benefit which truly the King might more make of Bullion then now he doth, is to erect again *Cambium Regis* his own exchange. An office as antient as before *Henry* 3. and so continued unto the middle of *Henry* 8. the profit of it being now ingrossed among a few Gold-Smiths, and would yield above 10000 l. a year if it were heedfully regarded, and then should the King himself keep his Mint in continual work, and not stand at the devotion of others to supply *Bullion*, and should never want the materials, if two things were observed: The one to permit all men bringing in *Bullion*, to trade outward the value thereof in domestick Commodities at an abated Custome.

The other to abate the mighty indraught of forreign manufactures, and unnecessary Wares, that the outward trade

might over-ballance the inward, which otherwise will (as it hath done) draw on this desperate consumption of the Common-Wealth; Which *anno* 27. *Edward* 3. was otherwise, for then the *Exitus* exceeded the *Introitus* by far, and in the last times of the late Queen as in *anno* 1573. For at this time the unmeasurable use of luxurious Commodities was brought in (as Wines, Spices, Silk, and fine Linnens, *&c.*) for of the latter sort of above ten groats the Ell there is above 360000. l. yearly spent, which is half the value of our cloth transported, maketh the State to buy more then they do sell, whereas a good Father of a family ought to be *vendacem* and not *emacem*. Besides the condition of our People is now such, that the greater part neither get nor save, which in a private house is an apparent argument of ruining, and must be no less in a Common-Wealth. And it is observed generally, that hence the want of Bullioin now is such, that there is not money in *Specie* sufficient to pay the lenders their principal, so that usury is paid for money upon supposition, and not really.

Ex Scacar inter rememb. Regis 27. Ed. 3.

If then his Majesty shall be pleased by advise of his Councel, to advantage himself any otherwise by *coinage*, it will be safer to do it upon a simple mettal, then by any implyant or better suite, which well governed States both modern and antient used: For *Rome* in her increase and great-

est pitch of glory had their money *are argento, auro puto puro*, and so have all the *Monarchies* absolute at this day in Christendome. And I believe it may be wrought to his Majesty of good value, and to the State of much ease, if it may be put in practise with discreet caution and constant resolution; for the danger onely may be in the venting of the quantity, which may clogge the State with useless money, or extension of the example, which may work in by degrees an embasement of Bullion.

The proportion that I would hold beneficial and safe, should be in the Mass, at first 120000.l. by which his Majesty should gain 10000. clearly: the increase annual 12000.l. in which his Majesty should gain 1000. And the limitation, that none be enforced to take any but in summes under 20 s. and then but the twentieth part proportionably.

Against this some may object, that it will either not advantage the King so much as is projected, either from the difficulty in venting, or facility in Counterfeiting, or else prejudice the estate with a worthless money.

The benefit to the King will easily fall out, if he restrain Retailers of victual and small Wares from using their own tokens, for in and about *London*, there are above 3000. that one with another cost yearly 5. l. apiece of leaden Tokens, whereof the

tenth remaineth not to them at the years end, and when they renew their ſtore, which amounteth to above 15000.l. And all the reſt of this Realm cannot be inferiour to the City in proportion. And the form and figure may with an Engine ſo ſubtilly be milled, that the charge will prevent all practiſe of falſe play.

For the prejudice ſince *London*, which is not the 24. part of the People of the Kingdome, had in it found above 800000. by a late inquiry by order of the late Queen, and ſo falleth out to be 2 d. a perſon, in the intire ſtate it may nothing, either of loſs by the firſt uttering being ſo eaſie, nor burthen any with too great a Maſs at a time, ſince continual uſe will diſperſe ſo ſmall a quantity into ſo many hands. But on the other ſide will be to the meaner ſort (except the Retailers that made as much advantage formerly of their own Tokens, as the King ſhall now) of neceſſary uſe and benefit: For the buyers hereafter ſhall not be tyed to one Seller and his bad Commodities, as they are ſtill, when his tokens, hereafter made currant by authority, ſhall leave him the choiſe of any other Chapman; and to the Poor in this time of ſmall charity, it will be of much relief; ſince men are like to give a farthing Almes, that will not part with a greater ſum.

Beſides, it cannot but prevent much waſte of Silver, that is by the minting pence and half

half pence occaſioned, there will be no cauſe hereafter to cut any Bullion into proportion ſo apt for loſſe: what that hath been may be conjectured, if we mark but of the great quantities from the peny downward ſince *Henry* 8. time ſtamped, how few remain: whereas of all the Coines from three pence upward which are manual, plenty paſs ſtill in dayly payment.

Regalities mixt.

As for reſtitution of the temporalities of Abbots and Biſhops.

For which *Henry* 7. received great ſums.

Corrodies in Cathedral Churches.

And having in every Cathedral and Collegiate Church, as incident to his Crown a Corrodary, made money of it, at the higheſt rate he could.

Vacancy of Biſhopricks.

The benefit at the vacancy of any Biſhop ſome Kings have uſed to their beſt advantage, making a circular remove of as many as in reputation and profit was inferiour to the place void.

Con-

Concurrent Jurisdiction as the Pope had in former times.

Besides, there are two of no mean commodity.

The one is grounded upon a concurrent Jurisdiction with every Ordinary in the Dioceſs, which the King by having the power *Papall* in that point inveſted in him by Act of Parliament, may exerciſe by his Commiſſion, or otherwiſe remit to the Ordinary for ſome valuable reſpect.

Ex compoſit. original. inter Card. *Wooſey*, & Archiep Cant. dated 14. Hen. 8.

Thus did Cardinal *Wooſey* with *Warham* the Arch-biſhop, and all other the Biſhops of the Kingdome, after he had got his Legative power. And this if it were put in practiſe would draw to the King 20000. l. in his Coffers.

Tenths of the Church-Lands now in the Laity.

The other is the ſhort account yielded the King of ſuch Eccleſiſtiacal tenths and duties, as were often or Annually paid unto the Pope in former times, and now by Statute inveſted in the Crown: for in former times the *See* of *Rome* received them not, as only out of the meer Spiritualities, but alſo from out of all the Temporalities of Spiritual perſons; which Land being now divided from the Church into the hands of the Laity; yet ought they to pay this duty, ſince they were ſettled in the Crown by a former Law, and no ſubſequent ever hath diſcharged them.

AN

ANSVVER

TO CERTAIN

ARGUMENTS

Raiſed from

Suppoſed Antiquity,

And urged by ſome MEMBERS of the lower HOUSE of

PARLIAMENT,

To prove that

Eccleſiaſtical Lawes,

Ought to be Enacted by

Temporal Men.

Written by Sir ROB. COTTON
Knight and Barronet.

LONDON:

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Temporal Men.

WHat, beſides ſelf-regard, or ſiding faction, hath been the main reaſon of the lower *Lay-houſe* labour in Parliament, to deal with Lawes of the Church, the milder Members have yielded a Right which they would maintain by former Pre-

Presidents, raising the same from

3. Reasons out of President.

1. Primitive use.
2. Middle practise.
3. Interrupted continuance.

Professing the same by the Laws of

1. Imperial constitutons.
2. Saxon laws.
3. Acts in Parliament

1. The *Roman Empire*.
2. The *Saxon* Kings.
3. The *English* Parliaments so to do.

Which since it may raise a prejudice to the Church's peace, or to the Soveraign's power, unopposed; I will make way (in a word or two) to the better answer of some other Pen. What they say is not to be denied, that in course of civil Laws under the Christian Emperours, there be often constitutions Ecclesiastical; and in the Councels of the Church (frequent) the Soveraign's power, and sometimes the presence of lay-Ministers; yet may their assertion admit to the first, this answer of *Justinian*; *Principes, Sapientes, Episcoporum monita, pro fide & Religione Christiana, Leges Synodicis Canonibus conformes edidere, recte judicantes, Sacerdotum Sanctiones meritò Majestatis Regiæ nutu roborari.* So that those decrees of the Civil Lawes, will prove but confirmatives of former *Canons*, as may be gathered by that of *Valentinian* and *Martian*. Emperours, who wrote unto *Paladius*, their *Prafectus Pratorii*, that all constitutions, that were against the *Canons* of the Church should stand void. And to the second, that their presence was to dignifie, and not to dispute; the direction proveth

Justinian.

Tripartita Historia.

proveth, that the Emperor *Theodosius* gave to *Candidianus* an Earl, by him to the *Ephesian* Councel sent; *Non ut Quæstiones seu Expositiones communicaret, cum sit illicitum quia non fit in ordine sanctissimorum Episcoporum, Ecclesiasticis tractatibus intermisceri.* And *Valentinian* the elder, though petitioned by the Bishops to be present at their Synod, said; *Sebi, qui unus e Laicorum numero esset, non licere hujusmodi negotiis se interponere.* And by the Council of *Carth.* and *African*, likewise it appeared; that even Princes would intermeddle with these matters; but *Sapius rogati ab Episcopis.* And the Emperor *Gratian* taught, as *Zozimus* saith, *Omnes Laicos nihil potestatis in res Ecclesiasticas posse sibi vindicare.* And the former *Emperor* enacted; *In causa Ecclesiastici alicujus ordinis eum judicare debere, qui nec manere impar est, nec jure dissimilis, Sacerdotes de Sacerdotibus judicare.* According to that Saying of *Constantine* the Great; *Vos enim a Deo nobis dati estis Dii, & conveniens non est ut homo judicet Deos.* Thus then stood the practice of the primitive Church; which when it was in those times otherwise, as under *Constantius* the *Arrian*, *Athanas.* saith of him; *Hæreseos veneno imbutos milites, Sicarios, Eunuchos Comites faciebat Sacerd. Judices, & cogebat umbraticas Synodas, quibus ipse cum monstris illis præsideret.* Whereas otherwise that Emperor, even in the height of *Pagan* Greatness, ascribed to their *Pontifices* and *Sacerdotes* in Common Right, *Propter Religionem comitia habere*

Distinct. 96. 1.

Nicep. lib. 11.

Con. { Carth. cil. { Affric.

Zozimus.

Ambros. l. 5. Ep. 32.

Rufinus Eccles. hist. l. 1.

Athan. Epist. ad solit. vitam agent.

Dionysius Halicarn.

habere propria, and that *Stabili Sententiâ rerum erat, quod tres Pontifices communi decreto statuissent.*

The second Objection. Ecclesiastical Laws enacted in Parliament.

To the second, as it is in the former true, that many Canons of the Church are interlaced with the Common-wealth, although the *Saxon* Laws, and that the establishment should be by Parliament, which they infer out of the *Frontispian*, of *Ina* Statutes in these words: *Ego Ina Rex ex tractatione Episcoporum, et omnium Aldermannorum meorum, & seniorum sapientum Regni mei & confirmatione Populi mei*; do ordain &c. Yet may receive this answer. First, that the Commons did but confirm and not dispute; which to this day is in their summons comprized only *ad consuetudines*. But whosoever shall collate the transcript copy with the original, called *Textus Roffensis*, will find these ordinances, not called *Leges* but *Synodalia*, and almost all by the King and Church-men onely made. Neither was it new in this Isle that Priests directed alone the government, when as the best Record of our eldest memory saith, that the *Druides*, (a religious *Pagan* order) not only *divinis interfunt, Religiones interpretantur*, but *de omnibus* (as *Cæsar* saith) *controversiis publicis privatisque constituunt; sive de hereditatamento, sive de finibus, & præmia & pœnas*

Saxon Lawes.

Leges Inæ.

Textus Roffensis.

panas conſtituunt. And if any, *ſive privatus, aut populus decreto eorũ non ſteterit, ſacrificiis interdicunt*. And this *excommunication* amongſt them, was *pœna graviſſima*. Neither did the times of Chriſtianity here bereave the Church of all ſuch will. For in the *Saxon* time they intermedled in the framing of the Temporal Lawes, and ought, as appeareth by an Ordinance of that time *de Officiis Epiſcopi: Cum ſeculi judicibus intereſſe ne permittent ſi poſſint, ut illinc aliqua pravitatum germina pullulaverint*. And ſurely, ſince theſe times until of late, the inferiour Miniſters of the Church, aſwel as Biſhops, had ſuffrage in Parliament. For *John de Rupeſciſſa* (a ſtory as old as King *John*'s time) ſaith, *Anno* 1210. *Convocatum eſt Parliamentum Londoniæ, Preſidente Archiepiſcopo cum toto Clero. & tota ſecta Laicali*. And in the 8. of *Edward* the 3. the Members of Parliament defective in their appearance, the King chargeth the Arch-biſhop to puniſh the defaults of the Clergie, as he would the like touching the Lords and Commons. And in third of *Richard* the ſecond, againſt a Petition in Parliament contradicting Proviſions, the Prelates and whole Clergy, make their proteſtations; And to a demand of the Lay-Commons, for the King's aide the year following, the whole Clergy anſwered, that they uſed not to grant any but of their free will. And in the eleventh of the ſame King, the Arch-biſhop of *Canterbury* made openly in Parliament

Leges Regum Saxorum.

Eulogium.

All the Clergy members of Parliament proved by Record.

Rot. Parl. 18. Edw. 3.

Rot. Parl. an. 3. Rich. 2.

Rot. Parl. an. 4. Rich. 2.

Rot. Parl. an. 11. Ri. 2. 11. 9.

liament a solemne protestation for himself, and the whole Clergie of his Province, entered by word; the effect whereof was, That albeit they might lawfully be present in all Parliaments, yet for that in those Parliament matters of treason were to be intreated of, whereas by the Canon-law they ought not to be present, they therefore absented themselves, saving their liberties therein otherwise.

Rot. Parl. an. 21. Rich. 2. n. 9. & 10. And in the 21. of *Richard* the 2. for that divers judgements were heretofore undon; for that the Clergie were not present: the Commons prayed the King, that the Clergie would appoint some to be their common Proctor, with sufficient authority thereunto. The Bishops and Clergie therefore being severally examined, appointed Sir *Thomas Piercy* their Proctor to assent, as by their Instruments appeareth.

Rot. Parl. an. 21 Rich. 2. n. 51. And the same year, upon the devise of Sir *Thomas Bussey*, most of the Bishops and Lords were sworne before the King again, upon the Crosse of *Canterbury*, to repeal nothing in this year enacted. So did sundry the Proctors of the Clergy, and most of the Commons, by holding up one of their hands, affirmed that they the same would do.

2. Ric. 2. n. 58. In the judgement of the *Duke* of *Norfolk*, and *Earl* of *Warwick* the same year, the name and assent of the Procurator of the Clergy alleadged. And in the first of *Henry* 4. the Bishop of *Assaph*, for Arch-bishop

1. Hen. 4. and

and Biſhops; the Abbot of *Glaſſenbury*, for all Religious Perſons; the Earl of *Glouceſter*, for Dukes and Earls; the Lord of *Barkley*, for Barons and Barronets; Sir *Thomas Irpingham* Chamberlain, for Batchelors and Commons of the South; Sir *Thomas Gray*, for Batchelors and Commons of the North; Sir *William Thirming* and *John Mekham* Juſtices, for the whole Eſtates, came to the Tower to King *Richard* to whom Sir *William Thirming*, for and in the name of them all, pronounced the ſentence of depoſition, and the words or reſignation of homage and loyalty.

And when it was enacted *anno 6. Henry 6.* by the King, Lords Temporal and Commons, that no man ſhould contract or marry himſelf to any Queen of *England*, without the ſpecial licence and aſſent of the King, on pain to loſe all his Goods and Lands; The Biſhops and all the Clergie to this Bill aſſented, ſo far as it was not againſt the Law of God. And thus far for anſwer to the ſecond part. Rot. Parl an. 6. He. 6. n. 17.

The third Reaſon. Eccleſiaſtical Lawes enacted in Parliament.

The laſt, which they granted from Preſidents, Parliaments ſince the Conqueſt, they infer out of the Phraſe, and out of the practiſe; The firſt by theſe words: *Rex Wintoniæ celebravit magnum Concilium coram Epiſcopis, Comitibus, & Baronibus*, mi- William Malmeſbury.

staking the word, as intending a Provincial Synod, whereas it was in those dayes equal and usual for their Parliament, that *French* Phrase never having admission in that sence here untill the time of *Henry* 2. and then but rarely. That great assembly being formerly instiled *Magnum Consilium*; and until of late often enjoyed the same name. And this is evident out of the words of *Benedictus Abbas* in the life he wrote of the 2. *Henry*; *Circa festum sancti Pauli, venit Dominus Rex usque Northampton, & magnum ibi celebravit Consilium de Statutis Regni sui coram Episcopis, Comitibus Baronibus terræ suæ, & per Consilium Militum & hominum suorum.* Here the intent manifesteth the nature of that assembly, and the fuller, in that the same Author in the same year, saith, that *Richardus Cantuar. Archiepiscopus*, and *Rogerus Eboracensis cum Suraganeis suis congregatis apud Westmonasterium in Capella Monachorum infirmiorum tenuerunt Consilium*; or their convocation; which had been needless if in their first, they might have done their Church-affaires.

Lib. Eccleſiæ Cantuar.

Vita Hen. 2.

Here might I enter into a large and just discourse, as well of the authority as antiquity of their Convocation or Synod Provincial, no less antient, as *Beda* mentioneth, then in the year 686. when *Austin adjutorio Regis*, &c. assembled in Council the *Brittain* Bishops; from which unto this day there is successive Record of Councels or Convocations, less interrupted then of Parliament.

Beda.

Provincial Constitutions.

Pro-

Practice.

Now touching our practise to ordain in Parliament its Lawes Ecclesiastical, either meer or mixt, although it be by Record evident, yet must it admit this difference: First, that it sprung not from our dispute, or desire, but solely from the Petitions of the Church, as usual is in all the Rolls of Parliament, receiving their distinct Title from those of the Commons. And this they did to adde *Seculare Brachium* to their former Cannons, too weak to reach to corporal punishments; as in the fifth of *Richard* 2. when to suppress the Schismes, the Clergy became in Parliament the Petitioners to the Kings Laity; where these words of their assistance are, excluding the Commons from any Power of advice: *Habita prius bona & matura deliberatione de communi Consilio ipsius Archiepiscopi, Suffraganeorum suorum, aliorumque Clericorum, super quo idem Archiepiscopus supplicavit, ut pro debita castigatione illorum qui conclusiones Schismaticas prædicare voluerint, animo obstinato dignaremur apponere brachium Regiæ potestatis eidem.* And this aide was in order in the Conquerors time; who by edict commanded, that every Marshal, *Episcope & Deo faceret rectum secundùm Canones & Episcopales leges.* Which if he doth not, after excommunication, *Fortitudo et Justitia Regis adhibeatur.* And

Rot. Parl.

Clauſ. 5. Rich. 2.

Charæ 'nti. quæ 8. 8.

this even in the Primitive Church, was thought convenient: because as Saint *Ambrose* saith, for the like intent, to the Emperor *Valentinian*; *Non tantas vires sermo meus habiturus est pro Trinitate bellum gerens, quantum edictum tuum.* Hence it is that at this day, the King's authority is annexed ever to the Convocation; as in the antient Church were the like decrees of Kings; as those of *Eruigius* ratifying the twelfth Councel of *Toledo*. *Nemo illiciator vel contemptor vigorem his Institutionibus subtrahat, sed generaliter per cunctas Regni nostri provincias hæc Canonum instituta nostræ gloriæ temporibus acta, et autoritatis debitæ fastigia præpollebunt, & irrevocabili judiciorum exercitio prout constituta sunt in omnibus Regni nostri Provinciis celebres habebuntur. Si quis autem hæc instituta contemnat, contemptor se noverit damnari sententia; Id est, ut juxta voluntatem nostræ gloriæ, et excommunicatas à nostro cœtu resiliat; & in super decimam partem facultatis suæ fisci partibus sociandam, amittat.* But that the Church-laws ever moved from the Lay-members, I take it as far from President, as it is besides nhe nature of their Commission: The Bishops and Clergy being onely called in the Writ to that service, the word being, to come *in fide & delectione, ad declarandum Consilium & avisamentum, & ad consentiendum iis quæ tunc de avisamento & assensu Cleri nostri* (and not the Commons) *contigerit affirmari.* But if any shall object unto me, that many Laws,

Ambrosius.

Concil. 11. Toletan.

Ad consentiendum. Writ of summons Rot. claus. an. 22. Rich. 2. m. 7.

as

as that of the Supremacy in *Henry* 8. time, had first the ground in Parliament; it is manifested, by the dates of their Acts in convocations, that they all had properly in that place the first original. And that this was the use of old, nothing will leave it so clear, as to observe the fruitless success of the Laity, in all their endeavours to establish Ecclesiastical Laws; And this I will manifest by the Kings answer out of Record, so far as the Rolls of Parliament will admit me, successively. Until the 11. of *Edward* the first, there is no Record extant; but in that the Commons petition to the King, that a Law may be made against Usurers; The King gave answer, that it must be remedyed, *coram Ordinariis*. And when they desired remedy, *de multimodis injustis vexationibus eis factis per Officiales & alios ministros Ecclesiæ*; The King replyed; *Cancellarius emendet in temporalibus; Archiepiscopus faciet in spiritualibus.* From hence there is a lack of Record near to the 8. of *Edward* 3. In which Parliament the Commons desire an Act to restrain the Clergie in their trivial citations; whereunto they received from the King but this answer onely; That the King will charge the Bishops to see it remedyed. And the first of *Richard* the 2. preferring the like petition against corruption of Ordinaries, to do according to the Lawes of Holy Church. And in the fifth of the same King, they complain against abuses in Ecclesiasti-

Archivis. Archiepis.

Rot. Parl. 18. Edw. 1.

Usurie.

Vexation by Ordinaries.

Rot. Parl. 8. Edw. 3.

Citations.

Rot. Parl. an. 1. Rich. 2.

Pecuniarie pains.

5. Rich. 2.

Ecclesiastical Courts.

cal Courts. *Respons.* The King will charge the Clergy to amend the same.

Tythes. And in the 15. year, when they required an Act to declare the age of the titheable Wood; they had for answer, The King would move the Bishops for order between this and the next Parliament.

17. Rich. 2. n. 43. Learned Ministery. And in the 17of *Richard* 2. when they petitioned for a residing learned Ministry, so as the Flock for want might not perish; they had replyed, That the King willeth the Bishops to whom that Office belongeth, to do their duties.

Rot. Par. an. 2. Hen. 4. n. 44. *Henry* the 4. in his second year, desired by the Lords and Commons to pacify the Schisme of the Church; Answereth, he will charge the Bishops to consider the same. And in his fourth year, being importuned for an Act for residency of Ministers; replyed *Le Roy command au Prelats et perentre cy ils em purvoient de remedie.* And in the eleventh of the same King, to the like petition; *Respons: Ceste matiere appartient a* St. *Eglise et remede en la darraine Convocation.*

4. Hen. 4.

11. Hen. 4.

Rot Par. an. 1. Hen. 5. In Parliament under the 5. *Henry* and his first year, the King answereth the Commons petition, against oppressing Ordinaries; If the Bishops do not redress the same, the King will.

Rot. Par. an. 3. Hen. 6. And in *Anno* 3. *Henry* 6. to a Petition that Non-Residents should forfeit the profit of their living; gave answer, that he had delivered the Bill to my Lord of *Canterbury*

Canterbury, and ſemblably to my Lord of *York*; charging them to purvey meanes of remedy.

And in the year following, to a petition that Patrons may preſent upon *Non-Reſidencie*; *Reſpons*: There is remedy ſufficient in the Law ſpiritual. Rot. Parl. an. 4. Hen. 1.

Since then it is plain by theſe rehearſed anſwers, that from the Conqueſt, they have received but weak admittance: And by the edict of the firſt King *William* in theſe words, a ſharp reſtraint; *Defendo et mea auctoritate interdico, ne ullus laicus homo de legibus quæ ad Epiſcopum pertinent ſe intromittat.* And that the *Saxon* Synodals, are rather Canon-Laws, then Lay-mens Acts. And the practiſe of the primitive Church, if well underſtood, but a weak prop to their deſire; It may not ſeem diſtaſtful from the King (walking in the Steps of his Anceſtors, Kings of this Land) to return (as formerly) the Commons deſires to their proper place, the Church-mans care. And to conclude this point in all Parliaments, as *Martian* the Emperor did the *Chalcedon* Councel; *Ceſſat jam profana contentio; nam vere impius & ſacrilegus eſt, qui poſt tot ſacerdotum ſententiam, opinioniſuæ aliquid tractandum reliquit.* And with the Letter of Gods Law; *Qui ſuperbierit nolens obedire ſacerdotis imperio, ex decreto Judicis morietur homo.* Chartæ Antiquæ B. B. Leges Saxon. Concil. Chale. Levit. 14.

THE ARGUMENT

Made by the

COMMAND

Of the Houſe of

COMMONS

(Out of the Acts of Parliament, and Authority of Law expounding the ſame) at a

CONFERENCE

with the

LORDS,

CONCERNING THE

LIBERTIE

of the perſon of every

FREEMAN.

Written by Sir ROB. COTTON
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Concerning the Liberty of the perſon of every

FREEMAN.

My LORDS,

UPon the occaſions delivered by the Gentlemen, your Lordſhips have heard, the Commons have taken into their ſerious conſideration the matter of the perſonal liberty: and after long debate thereof

of on divers dayes, aſwell by ſolemn Arguments as ſingle proportions of doubts and anſwers, to the end no ſcruples might remain in any mans breaſt unſatisfyed; They have, upon a full ſearch and clear underſtanding of all things pertinent to the queſtion, unanimouſly declared, That no Freeman ought to be committed, or detained in Priſon, or otherwiſe reſtrained by the command of the King, or the Privy Councel, or any other, unleſs ſome cauſe of the commitment, deteinor, or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained: And they have ſent me with other of their Members to repreſent unto your Lordſhips the true grounds of ſuch their reſolution, and have charged me particularly (leaving the reaſons of Law and Preſidents for others) to give your Lordſhips ſatisfaction, that this Liberty is eſtabliſhed and confirmed by the whole State, the King, the Lords Spiritual and Temporal, and the *Commons*, by ſeveral Acts of Parliament, the authority whereof is ſo great, that it can receive no anſwer, ſave by interpretation or repeal by future Statutes: And thoſe that I ſhall mind your Lordſhips of, are ſo direct to the point, that they can bear no other expoſition at all; and ſure I am, they are ſtill in force.

The firſt of them is the grand Charter of the Liberties of *England*; firſt granted 17. *Johannis Regis*, and revived 9. *Hen.* 3. and ſince

since confirmed in *Parliament* above 30. times. The words are these, *cap.* 29. *Nullus liber homo capiatur vel imprisonetur, aut disseisetur de libero tenemento suo, vel Libertatibus, vel liberis consuetudinibus suis, aut ut lagetur, aut exuletur, aut aliquo modo destruatur: nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terræ.* These words *Nullus liber homo*, &c. are expres enough. Yet it is remarkable, that *Mathew Paris* (an Author of especial credit) doth observe *fol.* 432 that the Charter 9. *Henry* 3. was the very same as that of the 17. of King *John* (*in nullo dissimilis* are his words) and that of King *John* he setteth down *verbatim fol.* 342. And there the words are directly, *Nec eum in carcerem mittemus*: and such a corruption as is now in the point might easily happen betwixt 9. *Henry* 3. and 28. *Edward* 1. when this charter was first exemplified: but certainly, there is sufficient left in that which is extant to decide this question: for the words are, that no Freeman shall be taken or imprisoned but by the lawful judgement of his *Peers* (which is by Jury; *Peers* for *Peers*, ordinary Juryes for other, who are their *Peers*) or by the Law of the Land: Which Law of the Land must of necessity be understood to be of this notion, to be by due process of the Law; and not the Law of the land generally: otherwise it would comprehend Bondmen (whom we call Villaines) who are excluded by the word *liber*:

liber: For the general Law of the Land doth allow their Lords to imprison them at their pleasure without cause, wherein they only differ from the Freeman, in respect of their persons, who cannot be imprisoned without a cause. And that this is the true understanding of these words, *per legem terræ*, will more plainly appear by divers other Statutes that I shall use, which do expound the same accordingly. And though the words of this grand Charter be spoken in the third person; yet they are not to be understood of suits betwixt party and party; at least not of them alone, but even of the Kings suits against his Subjects, as will appear by the occasion of the getting of that Charter; which was by reason of the differences between those Kings and their People; and therefore properly to be applyed unto their power over them, and not to ordinary questions betwixt Subject and Subject.

Secondly, the words *per legale judicium parium suorum* immediately preceeding the other of *per legem terræ*, are meant of trials at the Kings suit, and not at the prosecution of a Subject. And therefore if a *Peer* of the Realm be arraigned at the Suit of the King upon an Indictment of murder, he shall be tryed by his *Peers*; that is by Nobles: but if he be appealed of murder by a Subject, his tryal shall be by an ordinary Jury of 12. Freeholders, as appeareth in 10. *Edward* 4. 6. 33. *Henry* 8. *Brooke* title *tryal*

trials 142 *Stamf.* pleas of the Crown *lib.* 3. *cap.* 1. *fol.* 152. And in 10 *Edward* 4. it is ſaid, ſuch is the meaning of *Magna Charta*. By the ſame reaſon therefore, as *per judicium parium ſuorum* extends to the King s ſuit; ſo ſhall theſe words *per legem terræ*. And in 8. *Edward* 3. *rot. Parl. m.* 7. there is a petition, that a Writ under the privy Seal went to the Guardian of the Great Seal, to cauſe Lands to be ſeized into the Kings hands; by force of which there went a Writ out of the Chancery to the Eſcheator, to ſeize againſt the form of the Grand Charter, that the King or his Miniſters ſhall put no man of Free-hold without reaſonable Judgement, and the Party was reſtored to his Land; which ſheweth the Statute did extend to the King. There was no invaſion upon this perſonal Liberty until the time of King *Edward* 3. which was eſtſoon reſented by the Subject: For in 5. *Edward.* 3. *cap.* 9. it is ordained in theſe words: It is enacted, that no man from henceforth ſhall be attached by any accuſation, nor fore-judged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels ſeized into the Kings hands againſt the form of the great Charter and the Law of the Land.

25. *Edward* 3, *cap.* 4. is more full; and doth expound the words of the grand Charter; and is thus: Whereas it is contained in the great Charter of the *Franchiſes* of *England*, that none ſhall be impriſon-

ed, nor put out of his Freehold, nor of his Franchise nor free Custome, unless it be by the Law of the Land. It is accorded, assented and established, that from henceforth none shall be taken by Petition or Suggestion made to our Lord the King, or to his Counsel, unless it be by Indictment or Presentment of his good and lawful People of the same Neighbourhood where such deeds be done, in due manner, or by process made by Writs Original at the common Law, nor that none be put out of his Franchises nor of his freeholds, unless he be due brought in answer, and forejudged of the same by the course of the Law, and if any thing be done against the same, it shall be redressed and holden for none.

Out of this Statute I observe, that what in *Magna Charta* and the Preamble of this Statute, is termed by the Law of the Land, is by the body of this act expounded, to be by process made by Writ Original at the Common Law; which is a a plain interpretation of the words, Law of the Land, in the Grand *Charter*. And I note that this Law was made, upon the Commitment of divers to the Tower, no man yet knoweth for what.

28 *Edward* 3. *cap.* 3. is yet more direct; (this liberty being followed with fresh Suit by the Subject) where the words are not many, but very full and significant: That no man, of what Estate or condition

on ſoever he be, ſhall be put out of his Lands or Tenements, nor taken, nor impriſoned, nor diſinherited, nor put to death, without he be brought in anſwer by due proceſs of the Law. Here your Lordſhips ſee, the uſual words, of the Law of the Land, are rendered by due proceſs of the Law.

36. *Edward.* 3. *Rot. Parl. n.* 9. amongſt the Petitions of the Commons one of them (being tranſlated into *Engliſh* out of *French*) is thus. Firſt, that the great Charter, and the Charter of the Forreſt, and the other Statutes made in his time, and in the time of his Progenitors, for the profit of him and his Communalty, be well and firmly kept, and put in due execution, without putting diſturbance, or making arreſt contrary to them, by ſpecial command, or in other manner.

The Anſwer to the Petition, which makes it an Act of Parliament, is: Our Lord the King, by the aſſent of the Prelates, Dukes, Earles, Barons, and the Communalty hath ordained and eſtabliſhed; that the ſaid Charters and Statutes be held and put in execution according to the ſaid Petition. It is obſerveable that the Statutes were to be put in execution according to the ſaid Petition? which is, that no Arreſt ſhould be made contrary to the Statutes, by ſpecial command. This concludes the queſtion, and is of as great force as if it were printed. For the Parliament-Roll is the true warrant of an Act,

and many are omitted out of the Books that are extant.

35. *Edward* 3. *Rot. Parl. nu.* 20. explaineth it further. For there the Petition is: *Item*, as it is contained in the grand Charter and other Statutes, That no man be taken or imprisoned by special command without Indictment or other process to be made by the Law upon *them*, aswel of things done out of the *Forrest* of the *King*, as for other things; That it would please our said Lord, to command those to be delivered, that are so taken by special command, against the form of the Charters and Statutes aforesaid.

The Answer is, The King is pleased, that if any man find himself greived, that he come and make his complaint, and right shall be done unto him.

37. *Edward* 3. *cap.* 18. agreeth in substance when it saith, Though that it be contained in the great Charter, that no man be taken, nor imprisoned, nor put out of his Freehold without process of the Law: Nevertheless divers People make false Suggestions to the King himself; as well for malice or otherwise, whereof the King is often grieved, and divers of the Realm put in damage, against the form of the the said Charter, wherefore it is ordained that all they which make suggestions, shall be sent with the same suggestions before the Chancellour, Treasurer and his grand Council; and that they there find Surety to pursue their suggestions: and incur the same

ſame pain that the other ſhould have had if he were attainted, in caſe that his ſuggeſtion be found evil; and that then proceſs of the Law be made againſt them, without being taken and impriſoned againſt the form of the Charter and other Statutes. Here the Law of the Land in the grand Charter is explained to be without proceſs of the Law.

42. *Edward* 3. at the requeſt of the Commons by their Petitions put forth in this Parliament, to eſchew miſcheif and damage done to divers of his Commons by falſe Accuſers, which oftentimes have made their accuſation more for revenge and ſingular benefit than for the profit of the King or of his People; which accuſed perſons, ſome have been taken and ſometime cauſed to come before the Kings Council, by Writ or otherwiſe, upon grievous pains againſt the Law, It is aſſented and accorded for the good governance of the Commons, that no man be put to anſwer without preſentment before Juſtices or matter of Record, or by due proceſs and Writ original according to the old Law of the Land: and if any thing from henceforth be done to the contrary, it ſhall be void in the Law and holden for Error.

But this is better in the Parliament-Roll, where the Petition and Anſwer (which make the Act) are ſet down at large 42. *Edward* 3. *Rot. Parl. n.* 12. The Petition

Item, becauſe that many of the Commons are hurt and deſtroyed by falſe Accuſers, who make their Accuſations more for their revenge and particular gaine, than for the profit of the King or his People: And thoſe that are accuſed by them, ſome have been taken, and others are made to come before the King's Councel, by Writ or other Command of the King, upon grievous pains, contrary to the Law. That it would pleaſe our Lord the King, and his good Council, for the juſt Government of his People, to ordain, that if hereafter any Accuſer purpoſe any matter for the profit of the King, that the matter be ſent to the Juſtices of the one Bench or the other, or the Aſſizes, to be enquired and determined according to the Law; and if it concern the Accuſer or Party, that he take his Suit at the Common Law, and that no man be put to anſwer, without preſentment before Juſtices, or matter of Record, or by due proceſs and Original Writ, according to the antient Law of the Land; and if any thing henceforward be done to the contrary, that it be void in Law, and held for error. Here, by due proceſs and Original Writ according to the antient Law of the Land, is meant the ſame thing as *per legem terræ* in *Magna Charta*. And the abuſe was, that they were put to anſwer by the Commandment of the King. The King's anſwer is thus. Becauſe that this Article is an Article of the Grand Char-

Charter: The King will that this be done as the Petition doth demand. By this appeareth that *per legem terræ* in *Magna Charta* is meant by due proceſs of the Law.

Thus your Lordſhips have heard Acts of *Parliament* in the point. But the Statute of *Weſtminſter* the firſt *cap.* 15. is urged to diſprove this opinion, where it is expreſly ſaid, that a man is not repleviſable who is committed by command of the King. Therefore the command of the King without any cauſe ſhewed, is ſufficient to commit a man to Priſon. And becauſe the ſtrength of the Argument may appear, and the anſwer be better underſtood, I ſhall read the words of that Statute, which are thus: And foraſmuch as Sheriffs and others, which have taken and kept in Priſon, perſons detected of Felony, and oftentimes have let out by Replevin, ſuch as were not repleviſable; becauſe they would gaine of the one party, and grieve the other. And foraſmuch as before this time it was not certainly determined what perſons were repleviſable, and what not, but onely thoſe that were taken for the death of a man, or by commandment of the King, or of his Juſtices, or for the Forreſt; it is provided, and by the King commanded, that ſuch Priſoners as before were outlawed, and they which have abjured the Realm, Provers, and ſuch as be taken with the manner, and thoſe which have broke the Kings Priſon,

Theives openly defamed and known, and such as be appealed by Provers, so long as the Provers be living, if they be not of good name, and such as be taken for burning of Houses felonioufly done, or for falſe money, or for counterfeiting the Kings Seal, or Perſons excommunicate taken at the requeſt of the Biſhop, or for manifeſt offences, or for treaſon touching the King himſelf, ſhall be in no wiſe repleviſable, by the common VVrit or without VVrit. But ſuch as be Indicted by Larceny, by Inqueſt taken before Sheriffs or Bayliffs by their Office, or of light ſuſpition, or for petty Larceny, that amonnteth not above the value of 12 *d.* if they were not guilty of ſome other Larceny aforetime, or guilty of receipt of Felons, or of *commandment* or force, or of aid in Felony done, or guilty of ſome other Treſpaſs for which one ought not to loſe Life or Member; and a man appealed by a Prover; after the death of the Prover if he be no common Thief, nor defamed, ſhall from henceforth be let out by ſufficient Surety, whereof the Sheriff will be anſwerable, and that without giving ought of their Goods. And if the Sheriff or any other let any go at large by Surety, that is not repleviſable, if he be the Sheriff, Conſtable, or any other Bayliff of Fee which hath keeping of Priſons, and thereof be attained, he ſhall loſe his Fee and Office for ever. And if the Under-Sheriff, Conſtable or Bayliff of ſuch as hath

Fee

Fee for keeping of Prisons, do it contrary to the will of his Lord, or any other Bayliff being not of Fee, they shall have 3. years imprisonment, and make a fine at the King's pleasure. And if any with-hold Prisoners repleviſable after they have offered sufficient Surety, he shall pay a grievous amerciament to the King; and if he take any Reward for the deliverance of such, he shall pay double to the Prisoner, and also shall be in the great mercy of the King. The answer is, it must be acknowledged, that a man taken by the command of the King is not repleviſable, for so are the expreſs words of this Statute, but this maketh nothing againſt the Declaration of the Commons: for they say not, that the Sheriff may Replevin such a man by Surety, *Scilicet Manucaptores*: but that he is bayleable by the Kings Court of Juſtice: for the better apprehending whereof, it is to be known, that there is a difference betwixt Repleviſable, which is alwayes by the Sheriff upon Pledges or Sureties given, and Baileable by a Court of Record, where the Prisoner is delivered to his Baile and they are his Jailors, and may imprison him, and shall suffer for him body for body, as appeareth 33. & 36. *Edward* 3. in the title of *Mainpriſe*, *plit*. 12, 13. where the difference betwixt Baile and *Mainpriſe* is expreſly taken. And if the words of the Statute it self be obſerved, it will appear plainly that it extends to the

Sheriff

Sheriffs and other inferiour Officers, and doth not bind the hand of the Judges. The Preamble, which is the Key that openeth the entrance into the meaning of the Makers of the Law) is: Forasmuch as Sheriffs, and others, which have taken and kept in Prison persons detected of Felony. Out of these words I observe, that it nominateth Sheriffs: and then if the Justices should be included, they must be comprehended under the general word, *Others*; which doth not use to extend to those of an higher rank, but to inferiours: For the best, by all course is first to be named; and therefore if a man bring a writ of Customes and Services, and name Rents and other things, the general words shall not include homage, which is a personal service, and of an higher nature; but it shall extend to ordinary annual services, 31. *Edward* 1. *droit* 67. So the Statute of 13. *Elizabeth cap.* 10. which beginning with Colledges, Deans and Chapters, Parsons and Vicars, and concludes with these words, *and others (and others having spiritual promotions)* shall not comprehend Bishops, that are of an higher degree, as appeareth in the Arch-bishop of *Canterbury* his Case reported by Sir *Edward Cook lib.* 2. *fol.* 466. And thus much is explained in this very Statute, to the end when it doth enumerate those were meant by the word *other*, namely Under-sheriffs, Constables, Bayliffes. Again, the

the words are Sheriffs and others, which have taken and kept in Prison. Now every man knoweth, that Judges do neither arrest nor keep men in Prison; that is the office of Sheriffs, and other inferiour Ministers; Therefore this Statute meant such only, and not Judges. The words are further, that they let out by replevin such as were not repleviſable. This is the proper language for a Sheriff: Nay more expreſs afterwards, in the body of the Statute: That such as are there mentioned, shall be in no wise repleviſable by the common VVrit (which is *de homine replegiando*, and is directed to the Sheriff) nor without Writ (which is by the Sheriff, *Ex Officio*) But that which receives no answer, is this: That the command of the Justices (who derive their authority from the Crown) is there equalled as to this purpose with the command of the King; and therefore by all reasonable construction, it must needs relate to Officers that are subordinate to both, as Sheriffs, Undersheriffs, Bayliffes, Constables, and the like: and it were an harsh exposition to say, that the Justices might not discharge their own command; and yet that reason would conclude as much. And that this was meant of the Sheriffs and other Ministers of Justice, appeareth by the Recital of 27. *Edward* 3. *cap.* 3. and likewise by *Fleta*, a Manuscript so called, because the Author lay in the Fleet when he made the Book.

For

For he *Lib.* 2. *cap.* 52. in his Chapter of Turns, and the Views of the hundred Courts in the Countrey, and setteth down the Articles of the charges that are there to be enquired of; amongst which, one of them is, *De replegialibus injuste detentis & irreplegialibus dimissis*; which cannot be meant of not bailing by the Justices. For what have the *inferiour Courts* of the Countrey to do with the Acts of the Justices? And to make it more plain, he setteth down in his Chapter (that concerns Sheriffs onely) the very Statute of *West.* 1. *cap.* 15. which he translates *verbatim* out of the *French* into *Latine*, save that he renders, Taken by the command of the Justices thus, *Per judicium Justitiariorum*, and his Preface to the Statute plainly sheweth that he understood it of Replevin by Sheriffs: for he saith, *Qui debent per plegios dimitti, qui non declaret hoc Statutum*; and *per plegios* is before the Sheriff. But for direct authority, it is the opinion of *Newton* Chief Justice, 22. *Henry* 6. 46. where his words are these: It cannot be intended but the Sheriff did suffer him to go at large by mainprise: for where one is taken by the VVrit of the King, at the commandment of the King, he is repleviſable; but in such Cases his Friends may come to the Justices for him if he be arrested, and purchase a *Supersedeas*. This Judge concludes, that the Sheriff cannot deliver him that is taken by the command of the King

King, for that he is irrepleviſable, which are the very words of the Statute: but ſaith he, his Friends may come to the Juſtices, and purchaſe a *Superſedeas*. So he declares the very queſtion, that the Sheriff had no power, but that the Juſtices had power to deliver him who is committed by the Kings command, and both the antient and modern practiſe manifeſts as much. For he that is taken for the death of a man, or for the Forreſt, is not repleviſable by the Sheriff; Yet they are ordinarily bayled by the Juſtices, and were by the Kings VVrits directed to the Sheriffs in the times of *Edward* 1. & *Edward* 2. as it appears in the cloſe Rolls, which could not be done if they were not baileable: and it is every dayes experience that the Juſtices of the Kings Bench do baile for murder, and for offences done in the Forreſt; which they could not do, if the word *Irrepleviſable* in *Weſtminſter* 1. were meant of the Juſtices as well as the Sheriffs.

For the Authorities that have been offered to prove the contrary, they are in number three. The firſt is 21. *Edward* 1. *rot.* 2. in *Scrin.* which alſo is in the book of *Pleas* in the *Parliament* at the Tower *fol.* 44. It is not an Act of *Parliament*, but a Reſolution in *Parliament*, upon an Action there brought, which was uſual in thoſe times. And the Caſe is, that *Stephen Rabah* the Sheriff of the County of *Leiceſter*, and *Warwick*, was queſtioned for that he had *Object.* 1.

had let at large, by Sureties, amongst others, one *William* the Sonne of *Walter le Persons*, against the will and command of the King, whereas the King had commanded him by Letters under his Privy Seal, that he should do no favour to any man, that was committed by the command of the Earl of *Warwick*, as that man was: Whereunto the Sheriff answered, that he did it at the request of some of the King's Houshold upon their Letters. And because the Sheriff did acknowledge the receipt of the King's Letters, thereupon he was committed to Prison, according to the form of the Statute.

To this I answer, that the Sheriff was justly punished, for that he is expresly bound by the Statute of *West.* 1. which was agreed from the beginning. But this is no proof that the Judges had not power to baile this man.

Object. 2. The next Authority is 33. *Henry* 6. in the Court of Common Pleas, *fol.* 28. *b.* 29. where *Robert Poynings* Esq; was brought to the Bar upon a *Capias*, and it was returned, that he was committed *per duos de Concilio* (which is strongest against what I maintain) *pro diversis causis Regem tangentibus*, And he made an Attorney there in an Action: Whence it is inferred, that the Return was good, and the Party could not be delivered.

Resp. To this the answer is plain. First, no Opinion is delivered, in that Book, one way

way or other upon the Return, neither is there any teſtimony whether he were delivered or bailed, or not.

Secondly, it appears expreſly that he was brought thither to be charged in an Action of Debt at another mans Suit, and no deſire of his own to be delivered or bailed: and then, if he were remanded, it is no way material to the queſtion in hand.

But that which is moſt relyed upon, is the Opinion of *Stamford* in his book of the Pleas of the Crown *Lib.* 2. *cap.* 18. *fol.* 72. 73, in his Chapter of *Mainpriſe*, where he reciteth the Chapter of *Weſt.* 1. *cap.* 15. and then ſaith thus: By this Statute it appears, that in 4. Cauſes at the Common Law a man was not repleviſable; to wit, thoſe that were taken for the death of a man, by the command of the King, or of his Juſtices, or for the Forreſt. Thus far he is moſt right. Then he goeth on and ſaith; As to the command of the King; that is underſtood of the command by his own mouth, or his Council, which is incorporated unto him and ſpeak with his mouth; or otherwiſe every Writ of *Capias* to take a man (which is the Kings command) would be as much. And as to the command of the Juſtices, their abſolute commandment; for if it be their ordinary Commandment, he is repleviſable by the Sheriff, if it be not in ſome of the Caſes prohibited by the Statute. *Object.* 3.

The

The answer that I give unto this is, that *Stamford* hath said nothing whether a man may be committed without cause by the Kings command, or whether the Judges might not baile him in such Case; but only that such an one is not repleviſable; which is agreed; for that belongs to the Sheriff: and becaüſe no man ſhould think he meant any ſuch thing, he concludes his whole ſentence touching the command of the King and the Juſtices, that one committed by the Juſtice's ordinary command is repleviſable by the Sheriff; So either he meant all by the Sheriff; or at leaſt it appears not that he meant, that a man committed by the King or the Privy Council, without cauſe, is not baileable by the Juſtices: and then he hath given no opinion in this Caſe. What he would have ſaid, if he had been asked the queſtion, cannot be known: Neither doth doth it appear by any thing he hath ſaid, that he meant any ſuch thing as would be inforced out of him.

And now, my Lords, I have performed the command of the houſe of Commons, and (as I conceive) ſhall leave their Declaration of perſonal liberty an antient and undoubted truth, fortifyed with ſeven Acts of Parliament, and not oppoſed by any Statute or Authority of Law whatſoever.

The

The Objections of the Kings Councel, with the Anſwers made thereunto at the two other conferences touching the ſame matter.

IT was agreed by Maſter Attorney Generall, that the ſeven Statutes urged by the Commons were in force, and that *Magna Charta* did extend moſt properly to the King. But he ſaid, that ſome of them are in general words, and therefore conclude nothing; but are to be expounded by the Preſidents, and others, that be more particular; are applied to the ſuggeſtions of Subjects, aud not to the Kings command ſimply of it ſelf.

Hereunto is anſwered, that the Statutes were as direct as could be, which appeareth by the reading of them, and that though ſome of them ſpeak of *ſuggeſtions* of the *Subjects*, yet others do not; and they that do, are as effectual; for that they are in *qual* reaſon; a commitment by the command of the King being of as great force when it moveth by a ſuggeſtion feom a Subject, as when the King taketh notice of the cauſe himſelf; the rather, for that Kings ſeldome intermeddle with matters of this nature, but by information from ſome of their People.

2. Maſter Attorney objected, that *per legem terræ* in *Magna Charta* (which is the Foundation of this queſtion) cannot be

underſtood for proceſs of the Law and Original Writ: for that in all Criminal proceedings no Original Writs is uſed at all, but every Conſtable may arreſt, either for felony, or for breach of the Peace, without proceſs or Original Writ: And it were hard the King ſhould not have the power of a Conſtable: and the Statutes cited by the Commons make proceſs of the Law, and Writ Original to be all one.

The Anſwer of the *Commons* to this *Objection* was, that they do not intend Original Writs only by the Law of the Land, but all other legal proceſs which comprehend the whole *proceedings* of Law upon the cauſe; other then the tryal by *Jury, per judicium parium*, unto which it is *oppoſed*. Thus much is impoſed *ex vi termini*, out of the word proceſs, and by the true acceptation thereof in the Statute have been urged by the Commons to maintain their declaration; and moſt eſpecially in the Statutes of 25. *Edward* 3. *cap.* 4. where it appeareth, that a man ought to be brought in to anſwer by the courſe of the Law, having made former mention of proceſs made by Original Writ. And in 28. *Edward* 3. *cap.* 3. by the courſe of the Law, is rendred by due proceſs of the Law. And 36. *Edward* 3. *Rot. Parl. nu.* 20. the Petition of the Commons ſaith, that no man ought to be impriſoned by ſpecial command without Indictment, or other due proceſs to be made by the Law. 37 *Edward* 3. *cap* 18. calleth the ſame

Plowd 289. Co. 5 111. 2 H. 3 18. 21. F 3. 9. 19 H. 6 Cap. 4.

ſame thing proceſs of the Law. And 42. *Edward* 3. *cap.* 3. ſtileth it by due proceſs and Writ Original; where the Conjunctive muſt be taken for a Disjunctive; which change is ordinary in expoſition of Statutes and Deeds to avoid inconveniences, and to make it ſtand with the reſt, and with Reaſon, and it may be Collected, that by the Law of the Land in *Magna Charta*; by the courſe of the Law in 25. *Edward* 3. by due proceſs of the Law in 28. *Ed.* 3. other due proceſs to be made by the Law 36. *Edward* 3. proceſs of the Law 37. *Edward* 3. and by due proceſs and Writ Original 42. *Edward* 3. are meant one and the ſame thing; the latter of theſe Statutes referring alwayes to the former; and that all of them import any due and regular proceeding of Law upon a cauſe, other then a trial by Jury. And this appeareth *Cook* 10. 74. in the caſe of the Marſhalſee; and *Cook* 11. 99. Sir *James Bagg's* caſe, where it is underſtood of giving juriſdiction by Charter or Preſcription, which is the ground of a proceeding by courſe of Law; and in *Seldens* Notes on *Fortiſcue fol.* 29. where it is expounded for Wager of Law, which is likewiſe a TRYAL at Law by the Oath of the party, differing from that of Jury: and it doth truly comprehend theſe and all other regular proceedings in Law upon cauſe, which gives authority to the Conſtable to arreſt upon cauſe, and if this ſhould not be the true

expoſition of theſe words (*per legem terræ*) the King's Council were deſired to declare their meaning; which they never offered to do; And yet certainly, theſe words were not put into the Statute, without ſome intention of conſequence.

And thereupon M. *Serjeant Aſhley* offered an *interpretation* of them thus; namely, that there were divers Laws of this Realm; As the Common Law; the Law of the Chancery; the Eccleſiaſtical Law; the Law of Admiralty or Marine Law; the Law of Merchants; the Martial Law; and the Law of State: And that theſe words, (*per legem terræ*) do extend to all thoſe Laws.

To this it was anſwered, That we read of no Law of State, and that none of thoſe Laws can be meant there, ſave the Common, which is the principal and general Law, and is always underſtood by way of *Excellency*, when *mention* is made of the *Law* of the Land generally; and that though each of the other Laws which are admitted into this Kingdom by Cuſtome or Act of Parliament, may juſtly be called a Law of the Land; yet none of them can have that preheminency to be ſtiled the Law of the Land; and no Statute, Law-book, or other Authority, printed or unprinted, could be ſhewed to prove that the Law of the Land, being generally mentioned, was ever intended of any other Law than the Common Law (and yet, even by theſe other

ther Laws a man may not be committed without a cauſe expreſſed) but it ſtandeth with the Rule of other legal expoſitions, that *per legem terræ* muſt be meant the Common Law, by which the general and univerſal Law by which men hold their Inheritances, and therfore if a man ſpeak of Eſcuage generally, it is underſtood (as *Littleton* obſerveth *plt*, 99.) of the incertain Eſcuage, which is a Knights ſerviec tenure for the defence of the Realm by the body of the Tenant in time of VVar; and not of the certain Eſcuage which giveth only a contribution in money, and no perſonal ſervice. And if a Statute ſpeak of the King's Courts of Record, it is meant only of the four at *Weſtminſter* by way of Excellency: *Cook*. 6. 20. *Gregories caſe*. So the *Canoniſts*, by the Excommunication, if ſimply ſpoken, do intend the greater Excommunication; and the Emperor in his Inſtitutions, ſaith, that the Civil Law being ſpoken generally, is meant of the Civil Law of *Rome*, though the Law of every City is a Civil Law, as when a man names a Poet, the *Grecians* underſtand *Homer*, the *Latiniſts Virgil*.

Secondly, admit that *per legem terræ* extend to all the Laws of the Land; yet a man muſt not be committed by any of them, but by the due proceedings that are exerciſed by thoſe Laws, and upon cauſe declared.

Again it was urged, that the King is

not bound to expreſs a cauſe of impriſonment; becauſe there may be in it matter of State not fit to be revealed for a time, leaſt the Confederates thereupon make means to eſcape the hands of Juſtice: and therefore the Statutes cannot be intended to reſtrain all Commitments, unleſs a cauſe be expreſſed; for that it would be very inconvenient and dangerous to the State to publiſh the cauſe at the very firſt.

Hereunto it was replyed by the Commons, That all danger and inconvenience may be avoided by declaring a general Cauſe; as, for Treaſon; for ſuſpition of Treaſon, Miſpriſion of Treaſon, or Felony, without ſpecifying the particular; which can give no greater light to a confederate then will be conjectured by the very apprehenſion or upon the impriſonment, if nothing at all were expreſſed.

It was further alleadged, that there was a kind of contradiction in the Poſition of the Commons, when they ſay, that the party committed without a cauſe ſhewed, ought to be delivered or bailed; bailing being a kind of impriſonment, delivery a total freedome.

To this it was anſwered, that it hath alwayes been the diſcretion of the Judges to give ſo much reſpect to a commitment by the Command of the King or the privie Councel, (which are ever intended to be

be done on juſt *and weighty* cauſes) that they will not preſently ſet him free, but baile him to anſwer what ſhall be objected againſt him on his Majeſties behalf: But if any other inferiour Officer commit a man without cauſe ſhewed, they do inſtantly deliver him as having no cauſe to expect their pleaſure; ſo the delivery is applyed to an impriſonment by the command of ſome mean Miniſter of juſtice; bailing when it is done by the command of the King or his Councel.

It was urged by Maſter Attorney, That bailing is a *grace* and *favour* of a Court of Juſtice, and that they may refuſe to do it. This was agreed to be true in divers caſes, as where the cauſe appeareth to be for felony, or other crime expreſſed; for that there is another way to diſcharge them in convenient time, by their tryal; (And yet in thoſe caſes the conſtant practiſe hath been, antiently and modernly to bayle men) but where no cauſe of the impriſonment is returned, but the command of the King, there is no way to deliver ſuch perſons, by tryal or otherwiſe, but that of *Habeas Corpus*, and if they ſhould be then remanded, they may be perpetually impriſoned, without any remedy at all, and conſequently, a man that had committed no Offence might be in worſe caſe then a great Offendor; for, the latter ſhould have an ordinary tryal to diſcharge him, the other ſhould never be delivered.

It was further said, that though the *Statute* of *West.* 1. *cap.* 15. as a *Statute*, by way of provision did extend only to the *Sheriff*; yet the Recital in that *Statute*, touching the 4. Causes wherein a man was not repleviſable at Common Law (namely thoſe that were committed for the death of a man; by the command of the King, or the Juſtices, or for the Forreſt) did declare that the Juſtices could not baile ſuch an one, and that Repleviſable and baileable were *Synonyma*, and all one. And that *Stamford* (a Judge of great authority) doth expound it acordingly; and that neither the *Statute* nor *He* ſay repleviſable by the Sheriff, but generally without reſtraint; and that if the Chief Juſtice committed a man, he is not to be enlarged by another Court, as appeareth in the Regiſter.

1. To this it was anſwered; Firſt, that the Recital and Body of the Statute relate only to the *Sheriff*, as appeareth by the very words.

2. That Repleviſable is not reſtrained to the Sheriff; for that the word imports no more, that a man committed by the *Juſtice* is baileable by the Court of the King s Bench.

3. That *Stamford* meaneth all of the Sheriff, or at the leaſt he hath not ſufficiently expreſſed that he intended the *Juſtices*.

4. It was denyed that Repleviſable and Baileable

Baileable are the ſame: For, they differ in reſpect of the place where they are uſed, Bail being in the King's Courts of *Record*, Repleviſable before the Sheriff. And they are of ſeveral Natures, Repleviſable being a letting at large upon Sureties; Bailing, when one *Traditur in ballium*, and the baile are his Jaylors, and may impriſon him, and ſhall ſuffer body for body; which is not true of replevying by *Sureties*. And Bail differeth from Mainprize in this, that Mainprize is an undertaking in a ſum certain, Bailing to anſwer the condemnation in civil Cauſes, and in criminal body for body.

And the Reaſons and Authorities uſed in the firſt conference were then renewed, and no exception taken to any, ſave that in 22. *Henry* 6. it doth not appear that the Command of the King was by his mouth (which muſt be intended) or by his Councel (which is all one, as is obſerved by *Stamford*) for the words are, that a man is not repleviſable by the *Sheriff*, who is committed by the Writ or Commandment of the King.

21. *Edward* 1. *Rot.* 2. *dorſo* was cited by the Kings Counſel. But it was anſwered, that it concerned the *Sheriff* of *Leiceſter*-ſhire only; and not the power of the Judges.

33. *Henry* 6. the King's Attorney confeſſed was nothing to the purpoſe; and yet that Book had been uſually cited by thoſe

No.

those that maintain the contrary to the declaration of the Commons; and therefore such sudden opinion as hath been given thereupon is not to be regarded, the Foundation failing.

And where it was said, that the *French* of 36. *Edward Rot. Parl. n.* 9. (which can receive no answer) did not warrant but what was enforced thence; but that these words, (*Sans- disturbance mettre, ou arrest faire, & l'encontre per special mandement ou en autre manere*) must be understood, that the *Statutes* should be put in execution without disturbance or stay; and not that they should be put in execution without putting disturbance or making arrest to the contrary by special command, or in other manner. The Commons did utterly deny the interpretation given by the Kings Councel; and to justifie their own, did appeal to all men that understood *French*, and upon the seven *Statutes* did conclude, that their Declaration remained an undoubted truth, not controuled by any thing said to the contrary.

The

The true Copies of the Records not printed which were uſed on either ſide in that part of the deba e.

Inter. Record. Domini Regis Caroli in Theſaurar. recep. Secti. ſui ſub Cuſtodia Domini Theſaurar. & Camer. ibidem remanen. videlicet Plac. coram ipſo Domino Rege & Concilio ſuo ad Parliamentum ſuum poſt Paſc. apud London in Maverio Archiepiſcopi Ebor. Anno Regni Domini Regis Edwardi 21. int. al. ſic. continetur ut ſequitur.

Rot. Secundo in Dorſo.

STephanus Rabar. Vic. Leic. & Warr. coram ipſo Domino Rege & ejus Concilio arrenatus & ad rationem poſitus de hoc quod cum *Johan. Boutetourte, Edw. Del Hache,* & *W. Havelin* nuper in bal. ipſius Vic. per Dominum Regem fuiſſent aſſignat. ad *Goales* Domini Regis deliberand. idem Vic. quendam Wilhel. de Petling per quendam Appellatorem ante adventum eorum juſtic. ibidem appellatorem & Captum vivente ipſo Appellatore uſque diem de liberationis coram eis fact. dimiſit per plevinam contra formam Statuti &c. Et etiam quendam Radum Vic. Leiceſter.

Radum de Cokehal, qui de morte hominis judicatus fuit, & per eundem Vic. Captus, idem Vic. per plevinam dimisit contra formam Statuti, & etiam eundem Radum sine ferris coram eisdem Justic. ad deliberationem præd. produxit contra consuetudinem Regni. Et sci. quendam Wilh. filium Walteri la persone, qui per præceptum Com. War. Captus fuit, per plevinam contra præceptum Domini Regis, cum idem Dominus Rex per literas suas sub privat. sigillo suo eidem Vic. præcepit quod nulli per præcept. præd. Com. War. capt. aliquam gratiam faceret &c. Et super hoc præfat. *Johannes Botetourte*, qui præsens est, & qui fuit primus Justic. prædictorum præmissa recordatur. Et prædictus Vic. dicit quoad prædictum Wilh. de Petling, quod ipse nunquam a tempore Captionis ipsius Wilh per præd. Appellat. dimissus fuit per plevinam aliquam ante adventum prædictorum Justic. Imo dicit quod per dimidium Annum ante adventum eorundem Justic. captus fuit & semper detent. in prisona absque plevina aliqua quousque coram eis damnat. fuit. Et quoad prædictum Radum bene cognoscit quod ipse dimisit eum per plevinam, & hoc bene facere potuit ratione & authoritat. Officii sui, eo quod capt. fuit pro quadam simplic. transgr. & non pro aliqua felon. pro qua replegiari non potuit. Et quoad tertium, videlicet Wilh. filium persone, bene cognoscit quod ipse Captus fuit

fuit per præcept. præd. Com. War. & quod dimiſit eum per plevinam; Sed dicit quod hoc fecit ad rogatum quorundam de hoſpitia & cur. Domini Regis &c. qui eum inde ſpecialiter rogaverunt per literas ſuas. Et ſuper hoc idem Vic. quæſit. per Dominum *Regem* quis eum rogavit & literas ſuas ei direxit, & ubi literæ illæ ſunt, dicit quod Walt. de Langton eum per literas ſuas inde rogavit; Sed dicit quod literæ illæ ſunt in partibus ſuis Leic. Et ſuper hoc idem Vic. profert quoddam brev. Domini Regis de privat. Sigillo eidem Vic. direct. quod teſtatur quod Dominus Rex ipſi Vic. præcepit quod omnes illos trangreſſores contra pacem & de quibus. Com. War. ei ſcire faceret, caperet & ſalvo cuſtodiret abſque aliqua gratia ei faciend. Et quia præd. Iuſtic. expreſſe recordatur quod ipſe & ſocii ſui per bonam & legalem inquiſ. de Militibus. & al. liberis. hominib. eis fact. invenerunt quod prædictus Gulielmus de Petlenge dimiſſus fuit per plevinam per magnum tempus ante adventum eorund. Juſtic. uſque adventum eorund. & per Vic. præd. & etiam quia præd. Vic. cognoſcit quod prædictus Rad. dimiſſus fuit per plevinam per ipſum, un. & hoc dicit quod bene facere potuit eo quod captus fuit pro levi tranſgr. Et per Record. ejuſdem Juſtic. comp. eſt quod captus fuit pro morte hominis, quod eſt contrarium dec. prædicti vic. & ſcil. quia idem vic. cognovit quod recepit literam Domini Regis per quam Rex

ei

ei præcepit quod nullam *gratiam* faceret illis qui capti fuerunt per præceptum prædicti Com. Et idem Vic. contra præceptum illud dimiſit prædictum Wilh. filium Walteri per plevinam, qui captus fuit per præceptum prædicti Com. prout idem Vic. *fatetur*. Et ſic *tam* ratione iſtius tranſg. quam aliarium prædictarum incurrit in pœnam Statuti, conſ. eſt quod prædictus Vic. Committatur priſonæ juxta formam Statuti &c.

Ex Rot. Paliamenti de Anno Regni Regis Edwardi tertii Triceſimo quinto n. 9.

PRimerement que le grande Charter, & la Charter de la Forreſte, & les autre Eſtatutes faits en ſon temps, & de ſes progenitors pur profit de luy & de la come, ſoient bien & ferment gardes, & mis en due execution ſans diſturbance mettre ou arreſt faire, & l'econtre per ſpecial mandement ou en autre manere.

Reſpons.

Noſtre Sr. le Roy per aſſent de Prelates, Domines, Comites, Barones & la Come ad ordeine & eſtabili que les dits Charters & Eſtatutes ſoient tenus & mis en execution ſelon la dit Petition.

Nu. 2.

Item come il ſoit contenus en la grand Charter et autres Eſtatutes que nul homme ſoit pris nemy priſoner per eſpecial mandement ſans Enditement

tement aut autre due proces affaire per la ley, et ſonent foitz ad eſtre et uncore eſt, que pluſurs gentz ſont empeſchez, pris et impriſone ſans Enditement ou autre proces fait per la ley ſur eux, ſi bien de choſe fait hors de la Forreſt le Roy come per autre cauſe que pleſe a noſtre dit Sr. comander et deliver ceux que ſont iſſint pris per tiel eſpecial mandement contre la forme des Charters et Eſtatutes avanditz. Reſpons.

Il pleſt au Roy, & ſi nul ſe ſente greve vingne & face la pleinte, & droit luy ſera fait.

33.

Parl. Anno 42. Edward 3. n. 12.

Item pur ceo que pluſours de voſtre Come ſon tamerce & diſturbes per faulx accuſors queux font lour accuſements plus pur lour vengeances & ſingulers profits que pur le profit de Roy ou de ſon peuple, et les accuſes per eux aſcuns ont eſt pris & aſcuns ſont faire ven. deut le Conceil le Roy per brief ou autre mandement de Roy ſub grande pain encountre la ley, Pleſe a noſtre Sr. le Roy & ſon Counceil pur droit gouvernment de ſon peuple ordeign que ſi deſire aſcun accuſors purpoſe aſcun matire pur profit du Roy que cele matire ſoit mander a ſes juſtices del' un Banke ou del' autre, ou a' Aſſiſes deut enquere & terminere ſelonque la ley, & ſi le touche lai onſour ou partie eit ſa ſont a la come ley, & que null home ſoit mis a reſpondre ſans preſentment deut juſtices, ou choſe de Record, ou per due proces et briefe original, ſelon l'ancient ley de la terre, & ſi rien deſire enovant ſoit fait a l'encontre, ſoit voide en ley, & tenu pur Errour. Reſpons. Pur

Pur ceo que ceſte Article eſt Article de la grande Charter le Roy voet que ceo ſoit fait come la Petition demande.

Ex Rot. Clauſ. Anno Regis Edwardi primi primo m. 1.

De ponend. per Ballium.

Thomas de Clirowe de Blechweth captus & detentus in priſona North. pro tranſgr. Forreſt. habet literas Rogero de Clifford Juſtic. Forreſt. citra Trentam quod ponatur per ballium, dat. apud S. Martium Magnum London 20. die Octobris.

M. 7.

Stephanus de Li dely captus & detent. in priſona Regis pro tranſ. per ipſum fact. in ha. Regis de Lyndeby habet literas Regis Galfrido de Nevil Juſtic. ultra Trent. quod ponatur per Ballium.

M. 9.

Thomas Spademan captus & detent. in priſona Oxon. pro morte Wilh. Win. unde rectat. eſt & habet literas Regis Vic. Oxon. quod ponatur per ballium. ibidem.

Gulielmus de Dene, Mathæus Cruſt, Roger de Bedell, Gulielmus Halfrench, Robertus Wyant, Alex. Horeux, Henric. de Shorne, Nicholaus de Snodilond, Turgiſius de Hertfield, Robertus de Pole, & Richardus Galiot capti & detent. in priſona

sona de Cantuar. pro morte Galfridi de Catiller unde appellat. sunt, habent literas Regis Vic. Canc. quod ponantur per ballium Dat. &c. 23. die Martii.

Clauſ. Anno ſecundo Edwardi primi M. 12.

Rex Rogero de Cliffi Juſtic. Forreſt citra Trent. Mandamus vobis quod ſi Robertus Unwyne captus & detent. in priſona noſtra de Aylesburie pro tranſgr. Forreſtæ noſtræ, invenerit vobis *duodecim* probos & legales homines *de balliva* veſtra qui manucapiant eum habere coram Juſtic. *veſtris* ad plac. Forreſt. cum in parte &c. ad ſtand. inde rect. tunc apud Robertum ſi ſecund. aſſiam. Forreſte fuerit repleg. prædictis 12. interim tradit. in ballium ſicut prædictum eſt. Et habeatis nomina illorum 12. hominum & ho. bre. Dat. 27. die Februarii.

Clauſo Anno ſecundo Edwardi primi. M. 14.

Unwynus de Boycot, Gaſ. de Wykenn & Hugh de Stowe detent. in priſona Regis de Aylesburie pro trangreſſione Venationis habuer. bre. direct. Regis de Clifford Juſtic. Forreſt quod ſecundum aſſiam Forreſt fuerint repleg. ponantur per ballium uſque adventum Juſtic. Regis ad plac. Forreſte cum in partes illas venerit. Dat. apud Codington 28. die Decembris. Deponend. per ballium.

M. 15.

Gilbertus Conray de Kedington, & *Hugh le Tailour* de Kedington capti & detent. in prisona de secundo Edwardo pro morte Edwardi Butting, unde rectati sunt, habuerunt literas Regis Vic. Suff. quod ponantur per ballium.

Clauso Anno 3. *Edwardi primi.*

M. 11.

Galfr. de Hayerton captus & detent. in prisona Regis *Ebor.* pro *morte Ade le Clerc. unde rectatus est*, habet literas *Regis Vic. Ebor. quod ponatur per ballium. Dat. apud W.* 15. *die Junii.*

M. 20.

Robertus Belharbe capt. & detent. in prisona Regis de Newgate pro morte Thomæ Pollard. unde rectat, est, habet literas Regis Vic. Midd. quod ponatur per ballium. Dat. 28. die Februarii.

Clauso Anno quarto Edwardi primi.

M. 5.

Mand. est *Rad.* de *Sandwico* quod si *Gulielmus* de *Pattare* & *Johannes* filius ejus, *Walterus Home*, Walt. *Jorven*, *Henricus Pothe* & *Gulielmus Cadegan* capti & detent. in prisona Regis de secundo *Brianello* pro trans. Forrest unde rectati sunt, invenerunt sibi duodecim probos & legales homines de balliva sua, *viz.* quilibet eorum duodecim qui eos manucap. habere coram Justic. Regis ad plac. Forrest. cum

in partes ill. venerent, ad ſtand. inde recto, tunc ipſos Willhelmum, Johannem, Walterum, Walterum, Henricum & Willh. præd. duodecim. ſcil. ſecundum aſſiam Forreſte fuerint repleg. tradat in ballium ut prædictum eſt, Et habeat ibi nomina illorum duodecim hominum, & hoc. bre. T. Rege apud Bellum locum Regis 29. die Auguſti.

Clauſo Anno quarto Edwardi primi.

M. 16.

Henricus filius *Rogeri de Ken* de Cotteſbrook, captus & detent. in priſona noſtra North. pro morte Simonis le Charetter unde appellatus eſt, habet literas Regis Vic. North. quod ponit. per ballium. Deponend. Par. ballium.

Clauſo Anno quinto Edwardi primi.

M. 1.

Mand. eſt Galfrido de Nevil Juſtic. Forreſte ultra Trent. quod ſi Walter de la Grene captus & detent. in priſona de Nott. pro tranſ. Forreſte invenerit ſibi duodecim probos & legales homines qui eum manucapiant *&c.* ad ſtand. inde rect. ſecundum aſſiam Forreſte Regis, tunc ipſum Walterum prædictis duodecim tradat in ballium ſicut prædictum eſt. Dat. decimo ſexto die Novembris.

M. 2.

Thomas de Upwel & Jul. uxor ejus capt. & detent. in priſona de VVynbole

pro morte Stephani Southell unde rectati ſunt habuer. liter. Vic. Norff. quod ponantur per ballium. Dat apud Rocheland 28. die Septembris.

Clauſo Anno ſexto Edwardi primi.
M.

Bilherus Peſſe captus & detent. in priſona Regis de Norwich pro morte Jul. quond. uxoris ſuæ unde rectatus eſt, habet literas Vic. Norff. quod ponatur per ballium, T. Rege apud VVeſtmonaſt. 12. Novembris.

M. 4.

Mandat. eſt Vic. Nott. ſcilicet quod ſi Thomas de Cadrte rectatus de tranſg. Forreſt quam feciſſe dicebatur in Forreſto de Shirwood, invenerit ſibi ſex probos & legales homines de balliva ſua qui eum Reg. ad ſtand. rect. coram *R.* cum *R.* inde manucap. habere coram Rege ad mand. verſ. eum loqui voluerit, tunc præd. Tho. præd. ſex hominib. tradat in ballium juxta manucaptionem ſupradictam. Dat. decimo quinto die Decembris.

M. 4.

Thom. Burell Capt. & detent. in priſona Regis Exon. pro morte Galf. Giffarde unde rectat. eſt, habet litteras Vic. Devon. quod ponatur per ballium.

Clauſo

Clauſo Anno 3. Edwardi ſecundi.
M. 13.

Adem le Piper Capt. & detent. in Gaole Regis Ebor. pro morte Henr. le Simer de Eſcricke unde rect. eſt, habet literas Regis Vic. Ebor. quod ponatur per ballium uſque ad prim. aſſiam. T. Rege apud Weſtm. ſeptimo die Febr. Adam deponend. in ball.

M. 14.

Margareta uxor VVilh. Calbot capta & detent. in Gaole Regis Norwic. pro morte Agnetis filiæ Wilh. Calbot. & Martil. ſoror. ejuſdem Agnet. unde rectata eſt, habet literas Regis Vic. Norff. quod ponatur per ballium. T. Rege apud Shene 22. die Jan.

M. 18.

Johannes Frere Capt. & detent. in Gaole Regis Exon. pro morte Ade de Egelegh unde rectat. eſt, habet literas Regis Vic. Devon. quod ponatur per ballium. T. Rege apud VVeſtm. 8. die Decembris.

Clauſo Anno quarto Edwardi Secundi.
M. 7.

Robertus Shereve capt. & detent. in Gaole Regis de Colceſtr. pro morte Roberti le Meigne unde indictat. eſt, habet literas

ras Regis Vic. Eſſex, quod ponatur in ballium uſque ad pri. aſſiam. Dat. 22. die Maii.

M. 8.

VVilh. filius Rogeri le Fiſhere de Shurborne capt. & detent. in Gaole Regis Ebor. pro morte Roberti le Monnour de Norton unde rectatus eſt, habet literas Regis Vic. Ebor. quod ponatur per ballium uſque ad pri. Aſſiam, Dat. 25. Die April.

Clauſo Anno quarto Edwardi ſecundi.
M. 22.

Thom. Ellys de Stamford capt. & detent. in priſona Regis Lincoln. pro morte Michael. filii VVilh. de Foderingey unde rectatus eſt, habet literas Regis Vic. Linc. quod ponatur in ballium uſque ad pri. Aſſiam. T. Rege apud novam VVeſt. octavo die Septembris.

Patent. Anno octavo Edwardi pars prima membr. 14.

Pro Georgio de Rupe.

Rex omnib. ad quos *&c.* Salutem. Sciatis quod cum Georgius De Rupe de Hiber. defunctus pro eo quod ad Parliamenta apud Dublin in Hibern. Ann. Regni Domini Edwardi nuper Regis Angl. præc. noſtri viceſimo, & Anno Regni noſtri ſecundo

do tenta, non venit prout ſummonitus fuit, ad ducentas marcas amerciatus fuiſſet ut accipimus, Ac Johannes filius prædicti Georgii nobis ſupplicaverit ut habito reſpectu ad hoc quod prædictus pater ſuus ſe a Parliamentis prædictis cauſa in obedientiæ non abſentavit, per quod ita exceſſive amerciari deberet, Velimus concedere, quod amerciamenta illa quæ ab ipſo Johanne ad opus noſtrum per ſummonitionem Sccii noſtri Dublin jam exigunt, juſte moderentur. Nos volentes cum eodem Johanne gratioſe agere in hac parte, Volumus & concedimus quod decem libræ tantum de prædictis ducentis marcis ad opus noſtrum ex cauſis præmiſſis leventur; Et præfatum Johannem de toto reſiduo earundum ducentarum marcarum tenore præſentium quietamus. In Cujus &c. T. Rege apud Novum Caſtrum ſuper Tynam.

Per Petitionem de Concilio apud Novum Caſtrum ſuper Tynam.

Et mandat. eſt Thomæ & Camerar. de Sccio. Dublin quod prædictas decem libras de prædictis ducentis marcis de præfato Johanne ad opus Regis levent, & ipſum Johannem de toto reſiduo inde addict. Sccam. exonerari & quietum eſſe fact. T. ut ſupra.

Per eandem Petitionem

Patent. viceſimo ſeptimo Edwardi tertii pars prima membr. 13.

Pro Iacobo de Audele de non veniendo ad Parliamenta.

Rex omnibus ad quos &c. Salut. Sciatis quod de gra. noſtra ſpeciali Conceſſimus pro nobis & hered. noſtris dilecto, & fideli noſtro Iacobo Daudle de Helegh quod ipſe ad to tam vitam quietus ſit de veniendo ad Parliamenta & Concilia noſtra & hered. noſtrorum ac etiam ad congregationes Magnatum & procerum ad mandata noſtra vel heredum noſtrorum ubicunque faciend. Ita quod idem Jacobus, quoad vixerit ratione non adventus ſui ad Parliamenta, Concilia, ſeu Congregationes hujuſmodi, ſeu Perſonalis Comparationis in eiſdem per nos vel heredes noſtros aut miniſtros noſtros quoſcunque non impetatur, occaſionetnr aliqual. ſeu gravetur. Conceſſimus inſuper pro nobis & hered. noſtris præfato Jacobo quod ipſe toto tempore vitæ ſuæ ad laborand. de guerra in ſervitiis noſtris vel hered. noſtrorum ſeu ad homines ad arma, hobelarios, vel ſagitarios in hujuſmodi ſervitiis ex nunc inveniend. extra Regnum noſtrum Angl. niſi cum Regale ſervitium noſtrum aut heredum noſtrorum ſummonitum fuerit, contra voluntatem ſuam nullatenus Compellatur, nec ea de cauſa aliqualiter impetatur, Ita ſemper quod idem Jacobus cum hominibus ad arma & aliis armatis pro defenſione Regni noſtri Angl. infra idem Regnum quoties aggreſſus inimicorum

corum noſtrorum aut aliud periculum vel neceſſitas eidem Regno immineant una cum aliis fidelibus noſtris ipſius Regni proficiſcat. & homines ad arma, hobelar. & ſagittar. juxta ſtatum ſuum ſicut Cæteri de eodem Regno ea de cauſa invenire teneatur. In Cujus rei *&c.* T. Rege apud Weſt. 20. die April.

per ipſum Regem.

Patent. 42. Edwardi. 3. part. ſecunda mem. 13.

Rex omnibus Ball. & fidelibus ſuis ad quos *&c.* Salutem. Sciatis quod de gra. noſtra *ſpeciali* conceſſimus pro nobis & hered. noſtris dilecto & fideli noſtro Roberto de Inſula mil. fil. & heredi Johannis de Inſula, quod idem Robertus ad totam vitam ſuam hanc habeat libertatem, videlicet, quod ad Parliamenta ſeu Concilia noſtra vel hered. noſtrorum ex quacunque cauſa venire minime teneatur. Et quod ipſe in aliqua Jurata, attincta aut magna Aſſiſas nos vel heredes noſtros tangent. aut aliis Juratis, attinctis aut aſſizis quibuſcunque non ponatur *&c.* Et ideo Vobis mandamus quod prædictum Robertum contra hanc conceſſionem noſtram non moleſtetis in aliquo ſeu gravetis. In Cujus *&c.* T. Rege apud Weſt. 24. die Novembr.

Pro Roberto de Inſula milite de non veniendo ad Parliament.

per breve de privato Sigillo.

Pat. 34. Henric. ſext. membr. 23.

Pro Rich. Duce Ebor. de tenend. Parliamentum nomine Regis.

Rex omnibus ad quos &c. Salut. Sciatis quod cum pro quibuſdam arduis & urgentibus negotiis nos ſtatum & defenſionem Regni noſtri Angl. ac Eccleſiæ Anglicanæ contingentibus, quoddam Parliamentum noſtrum nuper apud Palatium noſtrum VVeſt. teneri, & uſque ad duodecim. diem hujus inſtantis menſis Novembr. ad idem Palatium noſtrum adjornari & prorogari ordinaverimus, quia vero dicto Parliamento noſtro propter certas juſtas & rationabiles cauſas in perſona noſtra non potuetuerimus intereſſe, Nos de circumſpectione & induſtria Cariſſimi Conſanguinei noſtri Rich. Ducis Ebora. plenam fiduciam reportantes, eidem Conſanguineo noſtro ad Parliamentum prædictum nomine noſtro tenend. & in eod. procedend. & ad faciend. omnia & ſingula quæ pro nobis & per nos pro bono regimine & gubernatione Regni noſtri prædicti ac aliorum Dominorum noſtrorum eidem Regno noſtro pertinent. ibidem fuerint faciend. nec non ad Parliamentum illud finiend. & diſſolvend. de aſſenſu Concilii noſtri plenam tenore præſentium Commiſimus poteſtatem. Dantes ulterius de aſſenſu ejuſdem Concilii noſtri tam univerſis & ſingulis Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Ducibus, Comitibus, Vicecomitibus, Baronibus & Militibus cum omnibus aliis quorum intereſt ad Parliamen-

mentum noſtrum prædictum conventur. ſcilic. tenore præſentium firmiter in mandatis quod eidem Conſanguineo noſtro intendant in præmiſſis in forma prædicta. In Cujus *&c.* T. Rege. apud VVeſt. 11. die Novembr. Per breve de privato Sigillo & de dat. prædict. *&c.*

Pat. 24. Henric. 6. memb. 19. pars prima.

Rex omnibus Balliis & fidelibus ſuis ad quos *&c.* Salut. Sciatis quod *cum* ubi VVilh. Lovell miles ad Parliamenta & Concilia noſtra ad mandatum noſtrum, venire teneatur, hinc eſt quod idem VVilhelmus, ob diverſ. infirmat. quibus detinetur, abſque maximo corporis ſui periculo ad Parliamenta & Concilia prædicta laborare non ſufficit, ut informamur. Nos præmiſſa, ac bona & gratuita ſervitia quæ idem VVilh. tam patri noſtro defuncto quam nobis in partibus tranſmarinis impendit, & nobis in in Regno noſtro Angl. impendere deſiderat Conſiderantes, de gratia noſtra ſpeciali Conceſſimus eidem VVilh. quod ipſe durante vita ſua per nos vel hered. noſtros ad veniend. ad Parliamenta ſeu Concilia noſtra quæcunque tent. ſive in poſterum tenen. contra voluntatem ſuam non arctetur nec Compellatur quovis modo, Sed quod ipſe ab hujuſmodi Parliamentis & Conciliis in futur. ſe abſentare poſſit licite & impune, aliquo Statuto, Actu, Ordinatione ſive Mandato inde in Contrarium fact.

De non veniend. ad Parlia. Lovel.

fact. ordinat. ſive proviſ. non obſtant. Et ulterius volumus, & eidem Wilhelmo per præſ. Concedimus quod abſentatio hujuſmodi non cedat ei in damnum ſeu prejudicium quoquo modo, Sed quod præſ. Carta noſtra de exemptione, per præfatum Wilh. ſeu alium quemcunque nomine ſuo in quibuſcunque locis infra Regnum noſtrum Angl. demonſtrat. ſuper demonſtratione illa eidem Wilh. valeat & allocetur, Proviſo ſemper quod idem Wilh. ad voluntatem ſuam, & heredes ſui loca ſua in Parliamenta & Conciliis prædictis habeant & teneant, prout idem Wilh. & anteceſſores ſui in hujuſmodi Parliamentis & Conciliis ab antiquo habuerunt & tenuerunt, Conceſſione noſtra prædicta non obſtante. In Cujus *&c.* T. Rege apud Weſt. quarto die Febr.

Per breve de privato ſigillo & de data prædicta authoritate Parliamenti.

Clauſo Anno 27. *Henric.* 6. *m.* 24. *dorſo.*

summonit. Parliamenti. Rex dilecto & fidel. ſuo Hen. Bromflete Militi Baroni de Veſcy Salutem. Quia & Volumus enim vos & heredes veſtros maſculos de Corpore veſtro legitime exeuntes Barones de Veſſey exiſtere. T. Rege apud Weſt. 24. die Januar.

Pat. 34. *Henric. ſext. membr.* 13.

Rex conceſſit Hen. Bromflete militi domino

mino Veſſey qui ſenio & tantis infirmitatibus *detentus* exiſtit, *quod abſque* maximo Corporis ſui periculo labor. non ſufficit, quod ipſe durante vita ſua ad perſonalit. veniend. ad perſon. Regis, per aliquod breve ſub *magno* vel privato ſigillo, aut per literam *ſub* ſigillo Signeti Regis, vel per aliquod *aliud mandatum* Regis vel hered. *ſuorum ſeu* ad *aliquod Concilium*, ſive *Parliamentum* Regis vel hered. *ſuorum* ex *nunc* tenend. *nullatenus arctatur neque compellatur* contra *voluntat. ſuam* &c. T. Rege *apud* Weſt. 13. *die Maii.*

Pro Henrico. Dom. Veſſey de exemptione.

Per *ipſum* Regem de dat. prædicta *auctoritate Parliamenti*.

A

SPEECH

Delivered in the Lower Houſe of

PARLIAMENT

Aſſembled at

OXFORD:

In the firſt year of the Reign of KING

CHARLES I.

By Sir ROBERT COTTON
Knight and Barronet.

LONDON:
Printed in the Year 1672.

A

SPEECH

Delivered in the Lower Houſe of

PARLIAMENT

Aſſembled at

OXFORD:

In the firſt year of the Reign of King

CHARLES.

Mr. *SPEAKER*,

ALthough the conſtant VViſdome of this Houſe of Commons did well and worthily appear in cenſuring that ill adviſed Member the laſt day, for trenching ſo far into their antient Liberties, and might encourage each worthy Servant of the publique here to offer freely up his Councel and opinion: Yet ſince theſe VValls cannot conceal from the Ears of captious, guilty and revengful men without, the Councel and debates within;

I will endeavour, as my clear mind is free from any perſonal diſtaſte of any one, ſo to expreſs the honeſt thoughts of my Heart, and diſcharge the beſt care of my truſt, as no perſon ſhall juſtly taxe my innocent and publick mind, except his Conſcience ſhall make him guilty of ſuch Crimes as worthily have in Parliament impeached others in elder times. I will therefore, with aſmuch brevity as I can, ſet down how theſe diſorders have by degrees ſprung up in our own memories; how the Wiſdom of the beſt and wiſeſt *Ager* did of old redreſs the like. And laſtly, what modeſt and dutiful courſe I would wiſh to be followed by our ſelves in this ſo happy Spring of our hopeful Maſter. For (*Mr.* Speaker) we are not to judge, but to preſent: The redreſs is above *ad Querimoniam Vulgi.*

Now (*Mr.* Speaker) ſo long as thoſe attended about our late Soveraign Maſter, now with God, as had ſerved the late Queen of happy memory, debts of the Crown were not ſo great; Commiſſions and Grants not ſo often complained of in Parliaments; Trade flouriſhed; Penſions not ſo many, though more then in the late Queens time: for they exceeded not 18000. l. now near 120000. l. All things of moment were carryed by publick debate at the Council-Table; No honour ſet to ſale; nor places of Judicature. Lawes againſt Prieſts and Recuſants

ſants were executed: Reſort of *Papiſts* to Ambaſſadors houſes barred and puniſhed; His Majeſty by daily direction to all his Miniſters, and by his own Pen declaring his diſlike of that Profeſſion: No waſtful expences in fruitleſs Ambaſſages, nor any tranſcendent power in any one Miniſter. For matters of State, the Council-Table held up the fit and antient dignity. So long as my Lord of *Somerſet* ſtood in ſtate of grace, and had by his Majeſty's favour the truſt of the Signet Seale; he oft would glory juſtly, there paſſed neither to himſelf, or his Friends any long Grants of his Highneſs Lands or Penſions: For that which himſelf had, he paid 20000. l. towards the Marriage-Portion of the King's Daughter. His care was to paſs no Monopoly or illegal Grant, and that ſome Members of this Houſe can witneſs by his charge unto them. No giving way to the ſale of Honours, as a breach upon the Nobility (for ſuch were his *own* words) refuſing Sir *John Roper*'s Office, then tendred to procure him to be made a Baron. The match with *Spain*, then offered (and with condition to require no further toleration in Religion then Ambaſſadours here are allowed) diſcovering the double dealing and the dangers, he diſſwaded his Majeſty from; and left him ſo far in diſtruſt of the Faith of that King, and his great Inſtrument *Gondomar*, then here reſiding, that his Majeſty did term him long time

after a *Jugling Jack*. Thus stood th'effect of his power with his Majesty when the Clouds of his misfortune fell upon him. VVhat the future advices led in, we may well remember. The marriage with *Spain* was again renewed: *Gondomar* declared an honest man: Poperie heartened, by admission of those unsure, before conditions of Conveniencie. The forces of his Majestie in the Palatinate withdrawn, upon *Spanish* faith improved here and beleived; by which his Highness Children have lost their Patrimony, and more money been spent in fruitless Ambassages, then would have maintained an Army fit to have recovered that Countrey. Our old and fast Allies disheartened, by that tedious and dangerous Treaty: And the King our now Master, exposed to so great a peril, as no wise and faithful Councel would ever have advised. Errors in Government, more in misfortune by weak Councels, then in Princes.

The loss of the County of *Poyntiffe* in *France*, was laid to Bishop *Wickham's* charge in the first of *Richard the* 2. for perswading the King to forbear sending aid when it was required: a Capital crime in Parliament. The loss of the *Dutchie* of *Maine* was laid to *De la Poole* Duke of *Suffolk* 28. *Henry* 6. in single and unwisely treating of a Marriage in *France*.

A *Spanish Treaty* lost the Palatinate: VVhose Councel hath pronounced so great power

power to the *Spanish* Agent(as never before) to effect freedome to so many Priests as have been of late, and to become a Sollicitor almost in every Tribunal or the ill-affected Subjects of the State, is worth the enquiry.

VVhat Grants of Impositions before crossed, have lately been complained of in Parliaments? As that of *Ale-houses*, *Gold-Thred*, *Pretermitted Customes*, and many more; the least of which would have 50. *Edward* 3. adjudged in Parliament an heinous crime, aswel as those of *Lyons* and *Latymer*.

The Duke of *Suffolk* in *Henry* 6. time, in procuring such another Grant in derogation of the Common Law, was adjudged in Parliament.

The gift of Honours kept as the most sacred Treasure of the State, now set to saile, Parliaments have been Suitors to the King to bestow those Graces; as in the times of *Edward* 3. *Henry* 4. and *Henry* 6. More now led in by that way onely then all the merits of the best deservers huve got these last 500. years. So tender was the care of elder times that it is an Article 28. *Henry* 6. in Parliament against the Duke of *Suffolk*, that he had procured for himself, and some few others, such Titles of Honour; and those so irregular, that he was the first that ever was Earl, Marques, and Duke of the self same place. *Edward* the first restrained the number, in pollicie,

that would have challenged a Writ by Tenure: and how this proportion may ſuit with profit of the State we cannot tell. Great deſerts have now no other recompence then coſtly *Rewards* from the King; For, we now are at a vile Price of that which was once ineſtimable. If worthy Perſons have been advanced freely to places of greateſt truſt, I ſhall be glad. *Spencer* was condemned in the 15. of *Edward* 3. for diſplacing good Servants about the King, and putting in his Friends and followers, not leaving, either in the *Church* or Common-Wealth, a place to any, before a Fine was paid unto him for his dependance. The like in part was laid by Parliament on *De la Poole*. It cannot but be a ſad hearing unto us all, what my Lord Treaſurer the laſt day told us of his *Majeſties* great Debts, high Engagements, and preſent wants: The noiſe whereof I wiſh may ever reſt incloſed within theſe Walls. For, what an incouragement it may be to our Enemies, and a diſheartning to our Friends, I cannot tell. The danger of thoſe, if any they have been the cauſe, is great and fearful. It was no ſmall motive to the Parliament, in the time of *Henry* 3. to baniſh the Kings half-Brethren for procuring to themſelves ſo large proportion of Crown Lands. *Gaveſton* and *Spencer* for doing the like for themſelves, and their followers in *Edward* the 2. time, and the Lady *Viſſy* for procuring the like for her

her Brother *Beaumont*, was baniſhed the Court. *Michael de la Poole* was condemned the 20. of *Richard* 2. in Parliament, amongſt other Crimes, for procuring Lands and Penſions from the King, and having imployed the Subſidies to other ends then the grant intended. His Grand-Child, *William Duke* of *Suffolk*, for the like was cenſured 28. *Henry* 6. The great Biſhop of *Wincheſter*, 50. *Edward.* 3. was put upon the Kings mercy by Parliament for waſting in time of Peace, the Revenues of the Crown, and gifts of the People, to the yearly oppreſſion of the Common-VVealth. Offences of this Nature were urged to the ruining of the Laſt Duke of *Somerſet* in *Edward* 6. time. More fearful Examples may be found, too frequent in Records. Such Improvidence and ill Councel led *Henry* the third into ſo great a ſtrait, as after he had pawned ſome part of his Forreign Territories, broke up his Houſe, and ſought his Diet at Abbies and Religious houſes, ingaged not onely his own Iewels, but thoſe of the Shrine of Saint *Edward* at *Weſtminſter*, he was in the end (not content, but) conſtrained to lay to pawne (as ſome of his Succeſſors after did) *Magnam Coronam Angliæ*, the Crown of *England*. To draw you out to life the *Image* of former Kings extremities, I will tell you what I found ſince this Aſſembly at *Oxford*, written by a Reverend man twice *Vice-Chancellour* of this place: his

name was *Gascoign*; a man that saw the Tragedy of *De la Poole*: He tells you that the Revenues of the Crown were so Rent away by ill Councel, that the King was inforced to live *de Tallagiis Populi*: That the King was grown in debt *quinque centena millia librarum*: That his great Favourite, in treating of a Forreign Marriage, had lost his Master a Forreign Dutchie: That to work his ends, he had caused the King to adjourn the Parliament *in Villis & remoti partibus Regni*, where few People, *propter defectum hospitii & victualium* could attend, and by shifting that assembly from place to place to inform (I will use the Authors words) *illos paucos qui remanebunt de Communitate Regni, concedere Regi quamvis pessima*. VVhen the Parliament endeavoured by an Act of Resumption, the just and frequent way to repair the languishing State of the Crown (for all from *Henry* 3. but one, till the 6. of *Henry* 8. have used it) this great man told the King it was *ad dedecus Regis*, and forced him from it: To which the Commons answered, although *vexati laboribus & expensis*, *Quod nunquam concederent taxam Regi*, until by authority of Parliament, *resumeret actualiter omnia pertinentia Coronæ Angliæ*. And that it was *magis ad dedecus Regis*, to leave so many poor men in intolerable VVant, to whom the King stood then indebted. Yet nought could all good Councel work, until by Parliament that bad great man

wi s

was baniſhed: which was no ſooner done; but an Act of Reſumption followed the inrollment of the Act of his Exilement. That was a ſpeeding Article againſt the Biſhop of *Wincheſter* and his Brother, in the time of *Edward* 3. that they had ingroſſed the perſon of the King from his other Lords. It was not forgotten againſt *Gaveſton* and the *Spencers* in *Edward* 2. time. The unhappy Miniſters of *Richard* 2. *Henry* 6. and *Edward* 6. felt the weight to their Ruine of the like Errors. I hope we ſhall not complain in Parliament again of ſuch.

I am glad we have neither juſt cauſe or undutiful diſpoſitions to appoint the *King* a *Councel* to redreſs thoſe *Errors* in *Parliament*, as thoſe of the 42. *H.* 3. We do not deſire, as 5. *H.* 4. or 29. *H.* 6. the removing *from* about the King of *evil Councellors*. *We* do *not requeſt* a *choiſe* by *name*, as 14. *E.* 3. 3. 5. 11. *R.* 2. 8. *H.* 4. or 31. *H.* 6. nor to *ſwear them* in *Parliament*, as 35. *E.* 1. 9. *E.* 2. or 5. *R.* 2. or to line them out *their directions of rule*, as 43. *H.* 3. and 8. *H.* 6. or deſire that which *H.* 3. did promiſe in his 42. year *ſe acturo nihil per aſſenſum Magnatum de Concilio ſuo electorum, & ſine eor. aſſenſu nihil*. We only in *loyal* duty offer up our *humble deſires*, that ſince his *Majeſty* hath with *adviſed Judgement elected* ſo *wiſe*, *religious* & *worthy Servants* to attend him in that *high imployment*, he will be pleaſed to adviſe with *them together*, a way of *remedy* for thoſe *diſaſters* in *State*, led in by *long ſecurity* and *happy peace*, and *not with young and ſingle Councel*.

A

A

SPEECH

Made by Sir

ROB. COTTON

Knight and Baronet, before the Lords of his Majesties most Honourable

PRIVY COUNCEL,

At the Councel Table: being thither called to deliver his Opinion touching

The

ALTERATION

OF

COYNE.

2. *Sept. Annoque Regni Regis Caroli* 2.

LONDON:
Printed in the Year 1672

A SPEECH *Touching the* ALTERATION OF COYNE.

My LORDS,

SInce it hath pleaſed this Honourable Table to command, amongſt others, my poor Opinion concerning this weighty Propoſition of money, I moſt humbly crave pardon; if with that Freedome that becomes my duty to my good and gratious Maſter, and my obedience to your great command, I deliver it ſo up.

I cannot (my good Lords) but aſſuredly conceive, that this intended Project of enhauncing the Coyne, will trench both into the Honour, the Juſtice, and the Profit Honour Juſtice & Profit

fit of my Royal Master very farre.

Honour

All Estates do stand *Magis Famâ quam Vi*, as *Tacitus* saith of *Rome*: and Wealth in every Kingdome is one of the Essential marks of their Greatness: and that is best expressed in the Measure and Puritie of their Monies. Hence was it, that so lohg as the *Roman Empire* (a Pattern of best Government) held up their Glory and Greatness, they ever maintained, with little or no charge, the Standard of their Coine. But after the loose times of *Commodus* had led in Need by Excess, and so that Shift of Changing the Standard, the Majesty of that Empire fell by degrees. And as *Vopiscus* saith, the steps by which that State descended were visibly known most by the gradual alteration of their Coine. And there is no surer Symptome of a Consumption in State then the corruption in money.

Edw. 1.

What renown is left to the Posterity of *Edward* the first in amending the Standard, both in purity and weight from that of elder and more barbarous times, must stick as a blemish upon Princes that do the contrary. Thus we see it was with *Henry* the sixth; who, after he had begun with abating the measure, he after fell to abating the matter; and granted commissions to *Missenden* and others to practise *Alchemy* to serve his Mint. The extremity of the State in general felt this aggrievance, besides the dishonour it laid upon

Hen. 6.

the

the perſon of the King, was not the leaſt advantage his diſloyal Kinſman took to ingrace himſelf into the Peoples favour, to his Soveraign's ruine.

VVhen *Henry* the 8. had gained aſmuch of Power and Glory abroad, of Love and Obedience at home, as ever any; he ſuffered Shipwrack of all upon this Rock. Hen. 8.

VVhen his Daughter Queen *Elizabeth* came to the Crown, ſhe was happy in Council to amend that Error of her Father: For, in a Memorial of the Lord Treaſurer *Burliegh's* hand, I find that he and Sir *Thomas Smith* (a grave and learned man) adviſing the Queen that it was the honour of her Crown, and the true wealth of her Self and People, to reduce the Standard to the antient purity and purity of her great Grand-Father King *Edward* 4. And that it was not the ſhort ends of VVir, nor ſtarting holes of deviſes that can ſuſtain the expence of a Monarchy, but ſound and ſolid courſes: for ſo are the words. She followed their adviſe, and began to reduce the Monies to their elder goodneſs, filling that work in her firſt Proclamation *Anno* 3. *A Famous Act.* The next year following, having perfected it as it after ſtood; ſhe tells her People by another *Edict*, that ſhe had conquered now that *Monſter* that had ſo long devoured them, meaning the Variation of the Standard: And ſo long as that ſad Adviſer lived, ſhe never (though often by Projectors importuned) could be drawn Queen Eliz. Edw. 4.

drawn to any shift or change in the Rate of her monies.

To avoid the trick of Permutation, *Coyn* was devised, as a Rate and Measure of Merchandize and Manufactures; which if mutable, no man can tell either what he hath, or what he oweth, no contract can be certain; and so all commerce, both publique and private, destroyed; and men again enforced to Permutation with things not subject to wit or fraud.

Iustices.

The regulating of Coine hath been left to the care of Princes, who are presumed to be ever the Fathers of the Common-VVealth. Upon their honours they are Debtors and VVarranties of Justice to the Subject in that behalf. They cannot, saith *Bodin*, alter the price of the moneyes, to the prejudice of the Subjects, without incurring the reproach of *Faux Monnoyeurs*. And therefore the Stories term *Philip le Bell*, for using it, *Falsificateur de Moneta. Omnino Monetæ integritas debet queriubi vultus noster imprimitur*, saith *Theodoret the Gothe* to his *Mint-Master*, *Quidnam erit tutum si in nostra peccetur Effigie?* Princes must not suffer their Faces to warrant falshood.

Bodin.

Theoderet the Gothe.

Although I am not of opinion with *Mirror des Iustices*, the antient book of our Common Law, that *Le Roy ne poit sa Mony Empeirer ne amender sans l'assent de touts ses Counts*, which was the greatest Councel of the Kingdome; yet can I not pass over the Goodness and Grace of money of our

Mirror des Iustices.

our Kings: (As *Edward* the 1. and the 3. *Henry* the 4. and the 5. with others, who, out of that Rule of this Juſtice, *Quod ad omnes ſpectat, ab omnibus debet approbari*, have often adviſed with the people in Parliament, both for the Allay, Weight, Number of peeces, cut of Coynage and exchange;) and muſt with infinite comfort acknowledge, the care and Juſtice now of my Good Maſter,, and your Lordſhips Wiſdoms, that would not upon information of ſome few Officers of the Mint, before a free and careful debate, put in execution this Project, that I much (under your Honours Favour) ſuſpect, would have taken away the Tenth part of every man's due debt, or Rent already reſerved throughout the Realm, not ſparing the King; which would have been little leſſe then a Species of that which the *Roman* Stories call *Tabulæ novæ*, from whence very often ſeditions have ſprung: As that of *Marcus Gratidianus in Livie*, who pretending in his *Conſulſhip*, that the Curran: money was waſted by uſe, called it in, and altered the Standard; which grew ſo heavy and grievous to the People, as the Author ſaith, becauſe no man thereby knew certainly his Wealth, that it cauſed a Tumult. Edw. 1. & 3. Hen. 4. & 5.

In this laſt part, which is, the Diſprofit this enfeebling the coyn will bring both to his Majeſtie and the Common-Wealth, I muſt diſtinguiſh the Monies of Profit.

Gold and Silver, as they are Bullion or Commodities, and as they are measure: The one, the Extrinsick quality, which is at the King's pleasure, as all other measures, to name; The other, the Intrinsick quantity of pure metall, which is in the *Merchant* to value. As there the measure shall be either lessened or inlarged, so is the quantity of the Commodity that is to be exchanged. If then the King shall cut his shilling or pound nominal less then it was before, a lesse proportion of such Commodities as shall be exchanged for it must be received. It must then of force follow, that all things of necessity, as Victuall, Apparell, and the rest, as well as those of Pleasure, must be inhaunced. If then all men shall receive, in their shillings and pounds a lesse proportion of Silver and Gold then they did before this projected Alteration, and pay for what they buy a rate inhaunced, it must cast upon all a double loss.

What the King will suffer by it in the Rents of his lands, is demonstrated enough by the alterations since the 18. of *Edward* the 3. when all the Revenue of the Crown came into the receipt *Pondere & Numero*, after five groats in the ounce; which since that time, by the severall changes of the Standard is come to five shillings, whereby the King hath lost two third parts of his just Revenue.

In his Customs, the best of rate being regulated

regulated by pounds and ſhillings, his Majeſty muſt loſe alike; And ſo in all and whatſoever monies that after this he ſhall receive.

The profit by this change in coynage, cannot be much, nor manent. In the other the loſs laſting, and ſo large, that it reacheth to little leſs then yearly to a ſixth part of his whole Revenue: for hereby in every pound tale of Gold there is nine ounces, one penny weight, and 19 grains loſs, which is 25 l. in account, and in the 100 l. tale of Silver 59 ounces, which is 14 l. 17 s. more.

And as his Majeſtie ſhall undergoe all theſe loſſes hereafter in all his receipts; ſo ſhall he no leſs in many of his diſburſements. The wages of his Souldiers muſt be rateably advanced as the money is decreaſed. This *Edward* the *third* (as appeareth by the account of the Wardrobe and Exchequor) as all the Kings after were enforced to do, as oft as they leſſened the Standard of their monies. The prices of what ſhall be bought for his *Majeſties* ſervice, muſt in like proportion be inhaunced on him. And as his Majeſty hath the greateſt of Receipts and Iſſues, ſo muſt he of neceſſity taſte the moſt of loſs by this device.

It will diſcourage a great proportion of the Trade in *England*, and ſo impair his Majeſty's Cuſtoms. For that part (being not the leaſt) that payeth upon truſt and

credit will be overthrown; for all men being doubtful of diminution hereby of their perſonal Eſtates, will call in their moneys already out, and no man will part with that which is by him, upon ſuch apparent loſs as this muſt bring. What danger may befall the State by ſuch a ſuddain ſtand of Trade, I cannot gueſs.

The monies of Gold and Silver formerly coyned and abroad, being richer then theſe intended, will be made for the moſt part hereby Bullion, and ſo tranſported; which I conceive to be none of the leaſt inducements that hath drawn ſo many *Gold-Smiths* to ſide this Project, that they may be thereby Factors for the ſtrangers, who by the lowneſs of minting (being but 2 s. Silver the pound weight, and 4 s. for Gold; whereas with us the one is 4. and the other 5 s.) may make that profit beyond-ſea they cannot here, and ſo his Majeſty's mint unſet on work.

And as his Majeſty ſhall loſe apparently in the alteration of monies a 14. in all the Silver, and a 25. part in all the Gold he after ſhall receive; ſo ſhall the Nobility, Gentry, and all other, in all their former ſetled Rents, Annuities, Penſions, and loanes of money. The like will fall upon the Labourers and Workmen in their Statute-wages: and as their receipts are leſſened hereby; ſo are their Iſſues increaſed, either by improving all prices, or diſfurniſhing

disfurniſhing the Market, which muſt neceſſarily follow. For if in 5. *Edwardi* 6. 3. *Mariæ*, and 4. *Elizabethæ*, it appeareth by the Proclamations, that a rumor only of an alteration cauſed theſe Effects, puniſhing the Author of ſuch reports with impriſonment and pillory; it cannot be doubted but the projecting a change muſt be of far more conſequence and danger to the State, and would be wiſhed that the Actors and *Authors* of ſuch diſturbances in the Common-Wealth, at all times hereafter might undergo a puniſhment proportionable.

It cannot be held (I preſume) an advice of beſt judgment that layeth the loſs upon our ſelves, and the gain upon our enemies: for who is like to be in this the greater Thriver? Is it not uſual, that the Stranger that tranſporteth over monies for Bullion, our own Gold-Smiths that are their Brokers, and the Forreign Hedge-minters of the *Netherlands* (which terms them well) have a freſh and full Trade by this abatement? And we cannot do the *Spaniſh* King (our greateſt enemie) ſo great a favour as by this, who being the Lord of this Commodity by his *Weſt-Indies*, we ſhall ſo advance them to our impoveriſhing; for it is not in the power of any State to raiſe the price of their own, but the value that their Neighbour Princes acceptance ſets upon them.

Experience hath taught us, that the

enfeebling of coyn is but a ſhift for a while, as drink to one in a dropſy, to make him ſwell the more: But the State was never throughly cured, as we ſaw by *Henry* the eighths time and the late Queens, untill the coyn was made up again.

I cannot but then conclude (my honourable Lords) that if the proportion of Gold and Silver to each other be wrought to that parity, by the advice of Artiſts, that neither may be too rich for the other, that the mintage may be reduced to ſome proportion of Neighbour parts, and that the Iſſue of our Native Commodities may be brought to overburthen the entrance of the Forreign, we need not ſeek any way of ſhift, but ſhall again ſee our Trade to flouriſh, the Mint (as the pulſe of the Common-Wealth) again to beat, and our Materials, by Induſtry, to be a mine of Gold and Silver to us, and the Honour, Juſtice and Profit of his Majeſtie (which we all wiſh and work for) ſupported.

The

The Anſwer of the Committees appointed by your Lordſhips to the Propoſition delivered by ſome Officers of the Mint, *for inhauncing his* Majeſtie's *monies of Gold and Silver.*

2. *September* 1626.

The firſt part. The Preamble.

VVE conceive that the Officers of the Mint are bound by Oath to diſcharge their ſeveral duties in their ſeveral places reſpectively. But we cannot conceive how they ſhould ſtand tyed by oath to account to his Majeſty and your Honors of the Intrinſick value of all Forreign coyns, and how they agree with the Standard of the State (before they come to the Mint) for it is impoſſible and needleſs: In the one, for that all Forreign States do, for the moſt part, differ from us and our money infinitely amongſt themſelves: In the other, it being the proper care of the Merchants, who are preſumed not to purchaſe that at a dearer rate then they may be allowed for the ſame in fine Gold and

Silver in the coyn of *England*, within the charge of coynage. And therefore needleſs.

To induce the neceſſity of the Propoſition, they produce two inſtances or examples; The one from the *Rex Doller*, and the other from the *Royal of Eight*; wherein they have untruely informed your Honours of the price and value in our monies, and our Trade of both of them. For whereas they ſay, that the *Rex Doller* weigheth 18. penny weight and 12. grains, and to be of the fineſt at the pound weight, 10. ounces, 10 pence weight, doth produce in exchange 5. s. 2. d. farthing of ſterling monies. We do affirm that the ſame *Dollar* is 18. d. weight 18. grains, and in fineneſs 10. ounces 12. d, weight, equal to 4. s. 5. d. ob. of ſterling monies, and is at this time in *London* at no higher price, which is ſhort thereof by 13. grains and a half fine Silver upon every *Dollar*, being 2. d. ſterling or thereabout, being the charge of coynage, with a ſmall recompence to the Gold-Smith or Exchanger, to the profit of *England* 3. s. 6. d. *per Centum*.

Whereas they do in their circumſtance averr unto your Honours, that this *Dollar* runs in account of Trade amongſt the Merchants as 5. s. 2. d. ob. *Engliſh* money: It is moſt falſe. For the Merchants and beſt experienced men proteſt the contrary, and that it paſſeth in exchange according to the Intrinſick value onely 4 s. 5. d. ob.

of

of the ſterling money, or neer thereabouts, and not otherwiſe.

The ſecond inſtance is in the *Royall of Eight*; affirming that it weigheth 17. penny weight, 12. grains; and being but of the fineneſs of 11. ounces at the pound weight, doth paſs in Exchange at 5 s. of our ſterling moneys, whereby we loſe 6. s. 7 d. in every pound weight. But having examined it by the beſt Artiſts, we find it to be 11. ounces, 2. d. weight fine, and in weight 17. penny weight, 12. grains; which doth equal 4. s. 4. d. ob. of our ſterling monies, and paſſeth in *London* at that rate, and not otherwiſe, though holding more fine Silver by 12. grains and a half in every *Royall of Eight*, which is the charge of coynage, and a ſmall overplus for the Gold-Smiths gain. And whereas they ſay, that the ſaid *Royall of Eight* runs in account of Trade at 5 s. of his Majeſtie's now *Engliſh* money; the Merchants do all affirm the contrary, and that it paſſeth only at 4 s. 4. ob. of the ſterling monies, and no higher ordinarily.

And it muſt be ſtrange (my honourable Lords) to believe that our Neighbours the *Netherlanders*, would give for a pound tale of our ſterling Silver, by what name ſoever it paſſeth, a greater quantity of their monies in the like intrinſick value by Exchange; Or that our Merchants would, knowing, give a greater for a leſs to them,

except

except by way of uſance. But the deceipt is herein only, that they continually varying their coyn, and crying it up at pleaſure, may deceive us for a time, in too high a Reputation of pure Silver in it, upon truſt, then there is, untill a trial; and this, by no Alteration of our coyn, unleſs we ſhould daily, as they make his Majeſtie's Standard uncertain, can be prevented, which being the meaſure of Lands, Rents and Commerce amongſt our ſelves at home, would render all uncertain, and ſo of neceſſity deſtroy the uſe of money; and turn all to permutation of ſuch things as were not ſubject to will or change.

And as they have miſtaken the ground of their Propoſition; ſo have they, upon a ſpecious ſhew of ſome momentary and ſmall benefit to his *Majeſty*, reared up a vaſt and conſtant loſs unto his Highneſs by this deſign, if once effected. For, as his *Majeſty* hath the largeſt portion of any both in the entrances and iſſues; ſo ſhould he by ſo enfeebling of his coyn, become the greateſt loſer.

There needs no other inſtance then thoſe degrees of diminution from the 18. of *Edward* 3. to this day; at which time the Revenue of the Crown was paid after five Groats the ounce (which is now five ſhillings) which hath loſt his *Majeſty* two thirds of all his Revenue; and no leſs hath all the Nobility, Gentry, and other

18. Edw. 3.

his

his *Maieſtie's* landed Subjects in proportion ſuffered. But ſince, to our great comfort, we heard your Honours the laſt day to lay a worthy blame upon the *Mint-Maſters*, for that intended diminution of the Gold-coyn done by them without full warrant; by which we reſt diſcharged of that fear: We will (according to our duties and your Honours command) deliver humbly our opinion concerning the reduction of the Silver money now currant to be proportionably equivalent to the Gold.

The *Engliſh* ſterling Standard, which was no little honour to *Edward* the firſt, that ſetled it from an inconſtant motion, and laid it a ground that all the States of *Europe* after complyed to bring in their account, which was of Silver a 11. to one of Gold, the Kings of *England* for the moſt part ſince have conſtantly continued the ſame proportion: and *Spain*, ſince *Ferdinand*, who took from hence his Pattern, have held and hold unchangeably the ſame unto this day: but ſince with us, a late improvement of Gold hath broke that Rule, and caſt a difference in our Silver of ſix ſhillings in the pound weight; we cannot but in all humility preſent our fear, that the framing, at this time of an equality, except it were by reducing the Gold to the Silver, is not ſo ſafe and profitable as is propoſed by thoſe of the Mint.

For whereas they pretend this, Our richneſs

richneſs of our Silver will carry out what now remaineth: We conceive (under favour) it will have no ſuch effect, but clean contrary. For all the currant Silver now abroad hath been ſo culled by ſome Gold-Smiths, the ſame either turned into Bullion, and ſo tranſported, that that which now remaineth will hardly produce 65. s. in the pound weight one with another; and ſo not likely, for ſo little profit as now it goeth, to be tranſported. But if the pound ſterling ſhould be as they deſire, cut into 70. s. 6 d. it muſt of neceſſity follow, that the new money will convert the old money (now currant) into Bullion; and ſo afford a Trade afreſh for ſome ill Patriot Gold-Smiths, and others, who formerly have more endamaged the State by culling, then any others by clipping; the one but trading in pounds, the other in thouſands; and therefore worthy of a greater puniſhment. And we cannnot but have juſt cauſe (my Lords) to fear that theſe bad members have been no idle inſtruments, for their private benefit, to the publick detriment, of this new project, ſo much tending to enfeebling the ſterling Standard:

We further (under your Lordſhips favours) conceive, that the raiſing of the Silver to the Gold, will upon ſome ſuddain occaſion beyond Sea, tranſport our Gold, and leave the State in ſcarcity of that, as now of Silver.

And

And to that Objection of the Propoſers, That there is no Silver *brought* of late into the mint: The cauſes we conceive to be (beſides the unuſual quantities of late brought into the mint in Gold) one the overballaſing of late of Trade; the other, the charge of coynage. For the firſt, it cannot be but the late infection of this City was a let of exportation of our beſt commodity, Cloth, made by that ſuſpected in every place. To this may be added the vaſt ſums of money which the neceſſary occaſion of war called from his *Majeſty* to the parts beyond the Seas, when we had *leaſt* of Commodities *to* make even the ballance there. And laſtly, dearth and ſcarcity of corn, which in time of plenty we ever found the beſt exchange to bring in ſilver. And therefore, ſince by Gods great Favour the Plague is ended, and general Trade thereby reſtored, and more of Plenty this year, then hath been formerly theſe many years, of corn, we doubt not but if the Ports of *Spain* were now as free as they were of late, there would not prove hereafter any cauſe to complain of the want of Bullion in the State.

The ſecond cauſe, that the mint remains unfurniſhed; will be the charge of coynage, raiſed in price ſo far above all other places, conſtraining each man to carry his Bullion where he may receive by coynage the leſs of loſs. And therefore if it may pleaſe his *Majeſty* to reduce the prices

prices here to the Rates of other of our Neighbour Countreys, there will be no doubt but the Mint will beat as heretofore.

Questions to be proposed to the Merchants, Mint-Masters, *and Gold-Smiths, Concerning the* Alteration *of the* Silver Monies.

1. WHether the *English* monies now currant are not as dear as the Forreign of the *Dollar* and *Reall* of 8. in the intrinsick value in the usual exchanges now made by the merchants beyond-Seas?

2. Whether this advancing will not cause all the Silver-Bullion, that might be transported in mass or Forreign coyn, to be minted with the King's stamp beyond-sea, and so transported, and his Mint thereby set less on work then now?

3. Whether the advancing the Silver-coyn in *England* will not cause a transportation of most of that that is now currant to be minted in the *Netherlands*, and from them brought back again, whereby his Majestie's Mint will fail by the exported benefit?

4. Whether the advancing the Silver coyn, if it produce the former effects, will not cause the Markets to be unfurnished

niſhed of preſent coyn to drive the exchange, when moſt of the old will be uſed in Bullion.

5. Whether the higher we raiſe the Coyn at home, we make not thereby our Commodities beyond-ſea the cheaper?

6. Whether the greateſt profit by this enhauncing, will not grow to the ill members of the State, that have formerly culled the weightieſt peeces, and ſold them to the ſtranger-Merchants to be tranſported?

Certain General Rules collected concerning Money and Bullion, out of the late Conſultation at Court.

GOld and Silver have a twofold eſtimation: in the Extrinſick, as they are monies, they are the Princes meaſures given to his people, and this is a Prerogative of Kings: In the Intrinſick they are Commodities, valuing each other according to the Plenty or ſcarcity; and ſo all other Commodities by them; And that is the ſole power of Trade.

The meaſures in a Kingdom ought to be conſtant: It is the Juſtice and Honour of the King: for if they be altered, all men at that inſtant are deceived in their precedent contracts, either for Lands or money, and the King moſt of all: for no man

man knoweth then, either what he hath or what he oweth.

1573. This made the Lord Treasurer *Burleigh* in 73. when some Projectors had set on foot a matter of this nature, to tell them, that they were worthy to suffer death for attempting to put so great a dishonour on the Queen, and detriment and discontent upon the People. For, to alter this publick measure, is to leave all the Markets of the Kingdome unfurnished; and what will be the mischief, the Proclamations of 5. *Edwardi* 6. 3. *Mariæ* and 4. *Elizabethæ*, will manifest; when but a Rumor of the like produced that effect so far, that besides the faith of the Princes to the contrary delivered in their Edicts, they were inforced to cause the Magistrates in every Shire respectively to constrain the people to furnish the Markets to prevent a mutiny.

5. Edw. 6.
3. Mariæ.
4. Eliz.

To make this measure then, at this time short, is to raise all prizes, or to turn the money or measure now currant into dilise or Bullion: for who will depart with any, when it is richer by seven in the hundred in the Mass, then the new monies; and yet of no more value in the Market?

Hence of necessity, it must follow, that there will not in a long time be sufficient minted of the new to drive the exchange of the Kingdome, and so all Trade at one instant at a stand; and in the mean time the

the *Markets* unfurniſhed: Which how it may concern the quiet of the State, is worthy care.

And thus far as money is a meaſure.

Now, as it is a Commodity, it is reſpected and valued by the intrinſick quality. And firſt the one metall to the other.

All commodities are prized by Plenty or ſcarſity, by dearneſs or cheapneſs, the one by the other: If then we deſire our Silver to buy Gold, as it late hath done, we muſt let it be the cheaper, and leſs in proportion valued; and ſo contrary: for one equivalent proportion in both will bring in neither. We ſee the proof thereof by the unuſual quantity of *Gold* brought lately to the Mint by reaſon of the price; for we rate it above all other Countries, and Gold may be bought too dear. To furniſh then this way the mint with both, is altogether impoſſible.

And at this time it was apparently proved, both by the *beſt Artiſts* and *Merchants* moſt acquainted with the *Exchange*, in both the examples of the Mint-maſters, in the *Rex Dollar* and *Reall of Eight*, That Silver here is of equal value, and *Gold* above, with the forreign parts in the intrinſick; and that the *fallacy* preſented to the *Lords* by the *Mint-Maſters*, is only in the *nomination* or extrinſick quality.

But if we deſire both, it is not raiſing of the value that doth it; but the *ballaſing* of *Trade*: for buy we in more then we

ſell of other *Commodities*, be the money never ſo high prized, we muſt part with it to make the diſproportion even: If we ſell more then we buy, the contrary will *follow*:

And this is plain in *Spain's* neceſſities: For ſhould that King advance to a double rate his *Reall of* 8. yet needing, by reaſon of the barrenneſs of his Countrey, more of Forreign Wares then he can countervail by Exchange with his own, he muſt part with his money, and gaineth no more by enhauncing his Coyn, but that he payeth a higher price for the Commodities he buyeth; if his work of raiſing be his own. But if we ſhall make improvement of *Gold* and *Silver*, being the ſtaple *Commodity* of his State; we then advancing the price of his, abaſe to him our own Commodities.

To ſhape this Kingdom to the faſhion of the *Netherlanders*, were to frame a Royal *Monarch* by a Society of Merchants. Their Countrey is a continual Fair, and ſo the price of Money muſt riſe and fall to fit their occaſions. We ſee this by raiſing the *Exchange* at *Franckford* and other places at the uſual times of their Marts.

The frequent and daily change in the low Countries of their monies, is no ſuch injuſtice to any there as it would be here. For being all either Mechanicks or Merchants, they can rate accordingly their labours or their wares, whether it be coyn or other Merchandiſe, to the preſent condition of their own money in Exchange.

And

And our *Engliſh* Merchants, to whoſe profeſſion it properly belongs, do ſo, according to the juſt intrinſick value of their Forreign coyn, in all barter of Commodities, or exchange, except at Uſance; Which we, that are ruled and tyed by the extrinſick meaſure of monies, in all our conſtant Reckonings and Annual bargains at home, cannot do.

And for us then to raiſe our coyn at this time to equal their proportions, were but to render our ſelves to a perpetual incertainty: for they will raiſe upon us daily then again; which if we of courſe ſhould follow, elſe receive no profit by this preſent change, we then deſtroy the *Policy, Juſtice, Honour and Tranquility* of our *State* at home for ever.

THE DANGER WHEREIN THIS KINGDOME NOW STANDETH, AND THE REMEDY.

Written by Sir ROB. COTTON Knight and Baronet.

LONDON,
Printed in the year 1651.

THE DANGER

Wherein this Kingdome now ſtandeth, and the REMEDIE.

AS ſoon as the houſe of *Auſtria* had *incorporated* it ſelf into the houſe of *Spain*, and by their new *Diſcoveries* gotten to themſelves the *Wealth* of the *Indies*; they began to affect, and have ever ſince purſued a fifth *Monarchy*.

The Emperour *Charles* would firſt have laid the foundation thereof in *Italy*, by ſurprizing *Rome*. But from this he was thruſt by the force and reſpect of *Religion*, *Henry* the 8. being made *Caput fœderis* againſt him.

He then attempted it in *High-Germany*, practiſing (by faction and Force) to reduce thoſe petty States to his abſolute power. In this *Henry* the 8. again prevented him, by tying the *Lutheran Princes* under his confederacy and aſſiſtance.

His Son, the ſecond *Philip*, purſued the ſame Ambition in the *Nether Germany*,

by reduction whereof he intended to make his way further into the other. This the late *Queen* of *England* interrupted, by siding with the afflicted people on the one part, and making her self Head of the *Protestant* League with the Princes on the other side; drawing in, as a secret of State, the Countenance of *France*, to give the more reputation and assistance to them, and security to it self,

Spain seeing his hopes thus fruitless by these Unions and sleights, began first, to break (if he might) the Amity of *France* and *England*: But finding the common danger to be as fast a Tye, he raiseth up a party in that Kingdome of his own, by the which the *French* King was so distressed, that had not the *English* Councel and Assistance relieved him, *Spain* had there removed that next and greatest obstacle of his ambition.

His Councel now tells him, from these examples, that the way to his great work is impassible so long as *England* lies a let into his way; and adviseth him, that the remove of that obstacle be the first of his intents. This drew on those often secret practices against the person of the late Queen, and his open fury in 88. against the Body of the State: For which, she (following the advice of a free Councell) will never after admit of Peace, winning thereby the hearts of a loving people, who ever found hands and money for all occasi-

on

ons at home, and keeping ſacredly her Alliances abroad, ſecured her confederates, all her time, in *freedome* from fear of *Spaniſh* ſlavery; And ſo ended her old and happy dayes in great Glory.

Spain then, by the Wiſdome and power of that great *Lady*, diſpoiled ſo of his means to hurt, though not of his deſire, makes up, with her peaceful Succeſſor of happy memory, the Golden League, that (diſarming us at home by opinion of Security, and giving them a power in our Councel by believing their friendſhip and pretended marriage) gave them way to cheriſh amongſt us a party of their own, and (bereaft of power abroad) to lead in jealouſie, and ſow a diviſion between us and our confederates; by which (we ſee) they have ſwallowed up the fortune of our Maſter's brother, with the reſt of the Imperial States, diſtreſſed the King of *Denmark* by that quarrell, diverted *Sweden's* Aſſiſtance by the wars with the *Pole*, and moving of him now with the offer of the *Daniſh* Crown: And now (whether from the Plot, or our Fatality) it hath caſt ſuch a *bone* between *France* and us, as hath gotten themſelves (by our quarrel of Religion) a faſt confederate, and us a dangerous enemy: So that now we are left no other Aſſurance againſt their Malice and ambition, but the *Nether-lands*; where the Tye of mutual ſafety is weak'ned by dayly diſcontents bred and fed between

us from ſome ill-affected to both our Securities; that from the doubtfulneſs of friendſhip as now we ſtand, we may rather expect from our own domeſtick faction, if they grow too furious, they will rather follow the example of *Rome* in her growing; that held it equally ſafe, honourable, and more eaſie, *dare Regem*, than *ſubjugare Provinciam*; conſidering the power they have in their hands, then to give any friendly Aſſiſtance to ſerve the preſent condition of our State. You may ſee therefore in what terms we ſtand abroad; and I fear me, at home, for reſiſtance in no better State.

There muſt be, to withſtand a Forreign invaſion, a *proportion* both of Sea and Land-forces; for to give an enemy an eaſie paſſage, and a port to relieve him in, is no leſs then to hazard all at one ſtake. And it is to be conſidered, that no march by land, can be of that ſpeed, to make head againſt the landing of an enemy, nor no ſuch prevention as to be Mr. of the Sea. To this point of neceſſary defence, there can be no leſs then 240000. l.

For the land-forces: If it were for an Offenſive war, the men of leſs livelihood were the beſt ſpared, and were uſed formerly to make ſuch war, *purgamento Reipublicæ*, if we made no further purchaſe by it. But for ſafety of a Common-wealth, the Wiſdom of all times, did never intereſt the publick cauſe to any other then ſuch

as

as had a portion in the *publick adventure*. And that we ſaw in 88. when the *ear of the Queen and Councel did make the body of that large Army, no other then of trained bands*, which with the *Auxiliaries* of the whole *Realm*, amounted to no leſs then 24000. men. Neither were any of *thoſe* drawn out *from forth their* Countries, *and proper habitations before the end of May, that there might be no long aggrievance to the publick*; ſuch *diſcontentments* being ever to us a more *fatal Enemy* then any *Forreign force*.

The careful *diſtribution* and *direction* of the *Sea* and *Land-forces*, being more fitting for a *Councel of War, then a private Man to adviſe of*, I paſs over; yet ſhall ever be willing and ready (when I ſhall be called) *humbly to offer up ſuch obſervations, as I have formerly gathered by the former like occaſions of this Realm.*

To make up this preparation, there are requiſite two things: Money & affections; for they cannot be properly ſevered. It was well & wiſely ſaid, by that great and grave Councellor the Lord Burleigh *in the like caſe to the late Queen: Win hearts, & you may have their hands & purſes; And I find of late, that diffidence having been a defect in the one, it hath unhappily produced the other.*

In gathering then of money for this preſent need, there are required three things: *Speed, Aſſurance*, and *Satisfaction*. And the way to gather (as others in the like caſes have done) muſt be by that path, which hath been formerly

merly called *Via Regia*, being more ſecure & ſpeedy: For, by unknown and untroden ways, it is both rough & tedious, & ſeldom ſucceedeth well This. laſt way, although it took place as it were by a ſupply at firſt, and received no general denyal; yet ſince it hath drawn many to conſider with themſelves and others of the Conſequence, and is now conceived a preſſure on their liberties and againſt Law, I much fear, if now again it be offered, either in the ſame face, or by Privy Seal, it will be refuſed wholly. Neither find I that the reſtraint of thoſe Recuſants hath produced any other effect then a ſtiff reſolution in them and others to forbear. *Beſides, though it went at the firſt with ſome aſſurance; yet when we conſider the Commiſſions and other forms incident to ſuch like ſervices, as that how long it hangs in hand, and how many delays there were, we may eaſily ſee, that ſuch a ſum by Parliament granted, is far ſooner and more eaſily gathered.*

If any will make the ſucceſſes of times to produce an inevitable neceſſity to enforce it levied (whether in general) by exciſe, or impoſition, or in particular upon ſome ſelect perſons (which is the cuſtom of ſome Countreys) and ſo conclude it (as there) for the *publick State, Suprema lege*) he muſt look for this to be told him: That ſeeing neceſſity muſt conclude always to gather money, as leſs ſpeedy or aſſured then that ſo practiſed (which *cannot* be fitter then by Parliament)

Parliament) the ſucceſs attendeth the humors of the heedleſs multitude, that are full of jealouſie and diſtruſt; and ſo unlike to comply to any unuſual courſe of Levy, but by force: which if uſed, the effect is fearful, and hath been fatal to the State; whereas that by Parliament reſteth principally on the regal perſon, who may with eaſe and ſafety mould them to his fit deſire, by a gracious yielding to their juſt Petitions.

If a Parliament then be the moſt *ſpeedy, aſſured, and ſafe way*; it is fit to conceive, what is the ſafeſt way to act and work it to the preſent need.

Firſt, for the time of the uſual Summons, reputed to be 40. days, to be too large for the preſent neceſſity: it may be by dating the Writ leſſened; ſince it is no poſitive law; ſo that a care be had that there may be one County day, after the Sheriff hath received the Writ before the time of ſitting.

If then the ſum to be levyed be once agreed of, for the time there may be in the body of the *Grant* an *Aſſignment* made to the *Knights* of every *County* reſpectively, who (under ſuch *Aſſurance*) may ſafely give *Security proportionable* to the Receipts, to ſuch as ſhall in preſent *advance* to the *Publick* ſervice any *ſums* of *money*.

The laſt and weightieſt conſideration (if a *Parliament* be *thought fit*) is, how to *remove* or *comply* the *differences between* the *King* and *Subject*

Subject in *their mutual demands*. And what I have learned amongst the better sort of the *Multitude*, I will freely declare; that *your Lordships* may be the *more* enabled to *remove* and *answer those distrusts*, that either *concern Religion, Publick safety of the King and State*, or the just liberties of the *Common-Wealth*.

For *Religion* (a *matter* that they lay nearest to *their conscience*) *they are led by this ground of jealousie to doubt some practise against it.*

First, for that the Spanish match, which was broken by the grateful Industry of my Lord of Bucking. out of his Religious care (as he there declares) that the Articles there demanded might lead in some such sufferance as might endanger the quiet, if not the State of the reformed Religion here: Yet there have (when he *was an Actor principal in the Conditions with* France) *as hard, if not worse (to the preservation of our Religion) passed then those with Spain. And the suspect is strengthened by the close keeping of this Agreement in that point there concluded.*

It is no less an Argument of doubt to them of his Affections, in that his Mother and others, many of his Ministers of neer imployment about him, are so affected.

They talk much of his advancing men *Papistically* devoted; some placed in the camp, of neerest service and chief Command: And that the Recusants have gotten, these late years, by his power, more of courage and assurance then before. If to clear these doubts (which perhaps are worse in fancy then in truth)

truth) he took a good courſe, it might much advance the *Publick ſervice*, againſt thoſe *ſqueymiſh humors* that have more *violent paſſion* then *ſetled judgment*; & are not the leaſt of the *oppoſite number* in the *Common-Wealth*.

The next is, The late misfortunes and loſſes of Men, Munition, and honour in our late Undertakings abroad: Which the more temperate ſpirits impute to want of Councel, and the more ſublime wits to practiſe.

They begin with the *Palatinate*, and by the *fault* of the *loſs there*, on the *improved credit of Gondomar*, diſtruſting him for the ſtaying of ſupplyes to Sir *Horace Vere*, when *Colonell Cecill was caſt on that imployment, by which the King of Spain became Maſter of the King's Children's Inheritance.*

And when *Count-Mansfield* had a Royal Supply of Forces, to aſſiſt the *Princes* of our part, for the Recovery thereof: either plot or error *defeated* the *Enterprize* from Us, to *Spains* great advantage.

That Sir *Robert Mansfield's expedition* to *Algiers*, ſhould purchaſe only the *ſecurity and guard of the Spaniſh Coaſts*. To ſpend ſo many *hundred thouſand pounds* in the *Cales Voyage*, againſt the *advice* of *Parliament*, onely to warn the *King of Spain* to be in a *readineſs*, & ſo to weaken our ſelves, is taken for ſuch a ſign of ill affection to him, amongſt the multitude.

The ſpending of ſo much *Munition, Victuals*, and *Money* in my *Lord Willoughbie's jonrney*, is conceived an *Umbrifty Error* in the

the *Director* of it to disarm our selves in *fruitless Voyages*, nay, to some (*over-curious*) seems a *plot* of *danger*, to turn the *quarrel* of *Spain* (*our antient enemy*) that the *Parliament petitioned and gave supply* to support, upon our *Ally* of *France*: and soon after, a new & happy Tye gave much talk that we were not so doubtful of *Spain* as many wish; since it was held, not long ago, a fundamental Rule of *Their security* and *Our's*, by the old Lord *Treasurer Burleigh*: That nothing can prevent the *Spanish Monarchy*, but a faltness of the two *Princes*, whose *Amity* gave countenance and courage to the *Netherlands* and *German Princes* to make head against his *Ambition*. And we see, by this dis-union a fearful defeat hath happened to *Denmark* and that party, to the great advantage of the *Austrian Family*.

And thus far of the Waste of publick Treasure in fruitless Expeditions: An important cause to hinder any new *supply* in *Parliament*. Another fear that may disturb the smooth and speedy passage of the King's desires in *Parliament*, is the late waste of the King's *Lively-hood*; Whereby is like (as in former times) to arise this Jealousie & fear: *That when he hath not of his own to support his ordinary charge (for which the Lands of the Crown were setled unalterable, and called Sacrum Patrimonium Principis) that then he must of necessity rest on those Assistances of the people which ever were only collected & consigned for the Common-Wealth. From hence is is like,*

there

there will be no great labour or ſtiffneſs to induce his Majeſty to an act of Reſumption; ſince ſuch deſires of the State have found an eaſie way in the will of all the Princes from the *third Henry* to the laſt. But that which is like to paſs deeper into their diſputes and care, is the late preſſures they ſuppoſe to have been done upon the publick libertie and freedom of the Subject, in commanding their Goods without aſſent by Parliament, confining their perſons without eſpecial cauſe declared; and that made good againſt them by the Judges lately; and pretending a Writ to command their attendance in a Forreign War: All which they are likely to enforce, as repugnant to many poſitive laws, and Cuſtomary Immunities of this Common-Wealth.

And theſe dangerous diſtruſts, to the people are not a little improved by this un-exemplified courſe (as they conceive) of retaining an Inland Army in Winter-ſeaſon, when former times of greateſt fear, as 88. produced no ſuch; and makes them (in their diſtracted fears) to conjecture (idly) it was raiſed wholly to ſubvert their fortunes to the will of power, more then of Law; and ſo make good ſome further breaches upon their liberties and freedoms at home, rather then defend us from any force abroad.

How far ſuch jealouſies, if they meet with an unuſual diſorder of lawleſs Souldiers, or an apt diſtemper of the looſe and needy

needy multitude, which will easily turn away upon any occasion in the State that they can side withal, to a glorious pretence of Religion and publick safety, when their true intent will be onely Rapine of the rich, and ruine of all, is worthy a provident and preventing care.

I have thus far delivered (with that freedom you pleased to admit) such difficulties as I have taken up amongst the multitude, as may arrest, if not remove Impediments to any speedy supply in Parliament at this time. Which how to facilitate, may better become the care of your Lordships Judgments, then my Ignorance. Only I could wish, that to remove away a personal distaste of my *Lord* of *Buckingham* amongst the *People*, *he might be pleased (if there be a necessity of Parliament) to appear a first Adviser thereunto: & what satisfaction it shall please his Majesty, of grace, to give at such time to his people (which I wish to be grounded by President of his best and most fortunate Progenitors, & which I conceive will largly satisfy the desires & hopes of all) If it may appear in some sort to be drawn down from him to the People, by the zealous care & industry that my* L. *of Buck. hath of the publick unity & content; by which there is no doubt that he may remain, not only secure from any further quarrel with them, but merrit an happy memory amongst them of a zealous Patriot. For to expiate the passion of the people at such a time with sacrifice of any his Majesties Servants, I have ever found it (as in E. the 2. R. the 2. and H. 6.) no less fatal to the Master, then the Minister in the end.*

VALOUR ANATOMIZED IN A FANCIE.

By Sir PHILIP SIDNEY.
1581.

LONDON,
Printed in the year 1672.

VALOUR ANATOMIZED IN A FANCIE.

VAlour towards Men, is an Emblem of Ability; towards Women, a Good quality ſignifying a better. Nothing draws a Woman like to it. Nothing is more behoveful for that Sex: for from it they receive Protection, and in a free way too, without any danger. Nothing makes a ſhorter cut to obtaining: for a Man of Arms is alwayes void of Ceremony, which is the Wall that ſtands betwixt *Piramus* and *Thisby*, that is Man, and Woman: For there is no Pride in Women but that which rebounds from our own Baſeneſs (as Cowards grow Valiant upon thoſe that are more Cowards) So that only by our pale asking we teach them to deny; and by our ſhamefac'dneſs we put them in mind to be modeſt. Whereas indeed it is cunning Rhetorick to perſwade the hearers that they are that already which the world would have them

to be. This kind of Baſhfulneſs is far from Men of valourous diſpoſition, and eſpecially from Souldiers: for ſuch are ever men (without doubt) forward and Confident, loſing no time leſt they ſhould loſe Opportunity, which is the beſt Factor for a Lover. And becauſe they know Women are given to diſſemble, they will never believe them when they deny. Certainly before this age of Wit and wearing Black, brake in upon us, there was no way known to win a Lady, but by Tilting, Turneying, and Riding to ſeek Adventures through dangerous Forreſts; In which time theſe ſlender Striplings with little Legs were held but of Strength enough to marry their Widdows. And even in our days, there can be given no reaſon of the inundation of Servingmen upon their Miſtreſſes, but onely that uſually they carry their Maſters Weapons, and their Valour. To be accounted handſome, juſt, learned, and well favoured, all this carries no danger with it. But it is better to be admitted to the title of Valiant acts: at leaſt that imports the venturing of Mortality; and all Women delight to hold Him ſafe in their Arms who hath eſcaped thither through many dangers. To ſpeak at once; Man hath a priviledge in Valour. In Cloaths and good Faces we do but imitate Women; and many of that Sex will not think much (as far as an anſwer goes)

to

to diſſemble Wit too. So then theſe neat Youths, theſe Women in Mens Apparell, are too near a Woman to be beloved of her; they be both of a Trade, but he of grim aſpect, and ſuch a one a Laſs dares take, and will deſire him for Newneſs and Variety. A Scar in a Mans face, is the ſame that a Mole is in a Womans, and a Mole in a Womans is a jewel ſet in White, to make it ſeem more white. So a Scar in a Man is a mark of honour, and no blemiſh; for 'tis a Scar and a blemiſh in a Souldier to be without one. Now as for all things elſe which are to procure love, as a good Face, Wit, Cloaths, or a good Body; each of them (I muſt needs ſay) works ſomewhat for want of a better; that is, if Valour corrive not therewith. A good Face availeth nothing; if it be on a Coward that is baſhful, the utmoſt of it is to be kiſt; which rather increaſeth than quencheth Appetite. He that ſendeth her Gifts, ſends her word alſo, that he is a Man of ſmall Gifts otherwiſe; for wooing by ſigns and tokens, implies the Author dumb. And if *Ovid* (who writ the Law of Love) were alive, as he is extant, and would allow it as a good diverſity; then Gifts ſhould be ſent as Gratuities; not as Bribes; and Wit would rather get promiſe, than Love. Wit is not to be ſeen, and no Woman takes advice of any in her Loving, but of her own Eyes, or her

Wayting Woman: nay, which is worſe, Wit is not to be felt, and ſo no good Bedfellow. Wit applyed to a Woman makes her diſſolve her ſimperings, and diſcover her Teeth with Laughter; and this is ſurely a purge for Love: for the beginning and original of Love is a kind of fooliſh Melancholly. As for the Man that makes his Taylor his Bawde, and hopes to inveagle his Love with ſuch a coloured Suit, ſurely the ſame man deeply hazzards the loſſe of her Favour upon every Change of his Cloaths. So likewiſe the other that Courts her ſilently with a good Body, let me tell him that his Cloaths ſtand alwayes betwixt his Miſtriſs eyes and him. The Comlineſs of Cloaths depends upon the Comlineſs of the Body, and ſo both upon Opinion. She that hath been ſeduced by Apparell, let me give her to wit, that men always put off their Cloaths before they go to bed; and let her that hath been inamoured of her Servants Body, underſtand, that if ſhe ſaw him in a skin of Cloath (that is, in a ſuit made to the pattern of his body) ſhe would diſcern ſlender cauſe to Love him ever after. There are no Cloaths fit ſo well in a Womans eye, as a Suit of Steel, though not of the faſhion: and no man ſo ſoon ſurpriſeth a Womans Affections, as he that is the ſubject of Whiſperings, and hath alwayes ſome 20 ſtories of his own Atchieve-

chievements depending upon him. Mistake me not, I understand not by Valour one that never fights but when he is backt by Drink or Anger, or hissed on by Beholders; nor one that is desperate, nor one that takes away a Servingmans Weapons, when perhaps they cost him his quarters wages; nor one that wears a privy Coat of defence, and therein is Confident: for then such as make Bucklers would be accounted the very scum of the Common-wealth. I intend one of an even Resolution, grounded upon Reason, which is alwayes even; having his Power restrained by the Law of not doing Wrong.

Philip Sidney.

Wooing-stuff.

FAint Amorist: what, do'st thou think
To taste Loves Honey, and not drink
One dram of Gall? or to devour
A world of sweet, and taste no sour?
Do'st thou ever think to enter
Th'*Elisian* fields that dar'st not venture
In *Charons* Barge? a Lovers mind
Must use to sayle with every wind.

He that loves, and fears to try,
Learns his Mistris to deny.
Doth she chide thee? 'tis to shew it,
That thy Coldness makes her do it;
Is she silent? is she mute?
Silence fully grants thy Sute;
Doth she pout, and leave the room?
Then she goes to bid thee come;
Is she sick? why then be sure,
She invites thee to the cure;
Doth she cross thy sute with No?
Tush, she loves to hear the woo;
Doth she call the faith of man
In question? Nay, 'uds-foot, she loves thee than;
And if e're she make a blot.
She's lost, if that thou hit'st her not.
He that after ten denials,
Dares attempt no farther tryals,
Hath no warrant to acquire
The Dainties of his Chaste desire.

Philip Sidney.

The

Sir *Francis Walsingham's*

ANATOMIZING

Of { *Honesty*, *Ambition*, and *Fortitude*.

Written in the year 1590.

LONDON:

Printed in the Year

1672.

Sir *Francis Walſinghams*

ANATOMIZING

Of { *Honeſty*, *Ambition*, and *Fortitude*.

WHat it is directly that I will write, I know not: For, as my thoughts have never dwelt long upon one thing; and ſo my Mind hath been filled with the Imagination of things of a different nature: So there is a neceſſity that this Offſpring of ſo un-compoſed a Parent muſt be miſhaped, anſwerable to the Original from whence it is derived. Somewhat I am reſolved to write, of ſome Virtues, and ſome Vices, and ſome indifferent things. For, knowing that a Mans life is a perpetual Action, which every moment is under one of theſe three heads; my Imaginations have ever chiefly tended to find out the Natures of theſe things, that I might, (as much as my Frailty (the inſeperable companion of Mans nature) would give me leave)

leave) wear out this Garment of my Body, with as little Inconvenience to my Soul as I could, and play this Game of Converſation (in which every one (as long as he lives) makes one) with the reputation of a fair Gameſter, rather than of a cunning one.

And firſt I will write of Honeſty; not in its general ſenſe (in which it comprehends all Moral Vertues) but in that particular in which (according to our phraſe) it denominates an Honeſt man.

Honeſty is a quiet paſſing over the days of a mans life, without doing Injury to another man.

There is required in an Honeſt man, not ſo much to do every thing as he would be done unto, as to forbear any thing that he would not be content to ſuffer; For the Eſſence of Honeſty conſiſts in forbearing to do ill: And to good Acts is a proper Paſſion, and no Eſſential part of Honeſty. As Chaſtity is the Honeſty of Women, ſo Honeſty is the Chaſtity of Man. Either of them once impaired is irrecoverable. For a Woman that hath loſt her Maidenhead, may as eaſily recover it, as a Man that hath once taken liberty of being a Knave can be reſtored to the title of an Honeſt Man. For Honeſty doth not conſiſt in the doing of one, or one thouſand Acts never ſo well; but in ſpinning on the delicate Threds of Life, though not exceeding Fine, yet free from Bracks,

and

and Staines. We do not call him an Honest man, but a Worthy man, that doth brave eminent Acts: But we give him the title of an Honest man, of whom no man can truly report any ill.

The most eminent part of Honesty is Truth: not in VVords (though that be necessarily required) but in the Course of his Life; in his Profession of Friendship; in his Promise of Rewards and Benefits to those that depend upon him; and grateful acknowledging those good turns that he receives from any man.

The greatest Opposite to Honesty is Falshood; and as that is commonly waited upon with Cunning and Dissimulation, so is Honesty with Discretion and Assurance.

It is true, that Custome makes some apparently false; some through Impudence, and too much use; and other some for want of Discretion, which if they had had, should have been employed in Covering it. And there be some, in whom (though it be impossible Honesty should be a Fault in Society) their indiscreet managing of it, makes it holden for a thing that's meerly a Vice, a wonderful troublesome Companion.

An Honest man is as neer an Aptitude to become a Friend, as Gold is to become Coyne: he will melt with good Offices well done, and will easily take the stampe of true Friendship; and having once taken it,

it, though it may be bended and bruiſed, yet ſtill will keep his ſtamp clean without Ruſt or Canker, and is not aſhamed to be encloſed in it, but is contented to have all his glory ſeen through it onely.

It is of it ſelf a Competent Eſtate of Vertue, able to ſupply all neceſſary parts of it to a Mans own particular; and a Man that is born to it, may raiſe himſelf to an eminency in all Vertues; though of it ſelf it will not furniſh a Man with the abilities of doing any glorious thing. It is pity that Honeſty ſhould be abſtracted from the luſtre of all other Vertues. But if there be ſuch an Honeſty, the fitteſt Seat for it is the Countrey, where there will be little need of any greater Ability, and it will be leaſt ſubject to Corruption. And therefore, ſince it is the Foundation upon which a man may build that part of his life which reſpects Converſation, he that builds upon it (let his actions be never ſo mean) ſhall be ſure of a good, though not of a great Reputation; whereas letting it periſh, let the reſt of the Building of his life be never ſo eminent, it will ſerve but to make the ruine of his good Name more notorious.

Of Ambition.

LOve, Honour, and Praiſe are the greateſt Bleſſings of this world: All other Contents reflect primarily upon the Body: and pleaſe the Soul onely becauſe they pleaſe ſome one or more Senſes. But thoſe therefore only delight the Senſes, becauſe the Soul by diſcourſe was firſt pleaſed with them. For in it ſelf there is more Muſick in a railing Song, thruſt upon a good Ayre, than in the confuſed Applauſe of the multitude. But becauſe the Soul, by Diſcourſe, finds this Clamor to be an argument of the eſtimation which thoſe that ſo Commend it have of it, it likes it ſelf better, and rejoyceth the more in it ſelf, becauſe it ſees other men value it. For there are two wayes of proving; the one by Reaſon, and the other by Witneſs; but the more excellent Proof is that of Reaſon: For he that can by Reaſon prove any thing to me makes his knowledge mine, becauſe by the ſame Reaſon I am able to prove it to another: But if 20. men ſhould ſwear to me they ſaw ſuch a thing, which before I did not believe; it is true, I ſhould alter mine opinion, not becauſe there appeared any greater likelihood of the thing; but becauſe it was unlikely that ſo many men ſhould lie: And if I ſhould go about to make others of the ſame opinion, I could not

not doe it, by telling them I knew it, or I ſaw it; but all I could ſay, were, I did believe it, becauſe ſuch and ſuch men told me they ſaw it. So in the Comfort a man takes of himſelf (which grows out of the conſideration of how much it ſelf deſerves to be beloved) a vertuous wiſe fellow will take enough Comfort and Joy in himſelf (though by Misfortune he is troubled to carry about with him the worlds Ill Opinion) by diſcourſing that he is free from thoſe Slanders that are laid upon him, and that he hath thoſe Sufficiencies and Vertues which others deny. And on the contrary ſide, he without deſerving it (having the good Fortune to be eſteemed and honoured) will eaſily be drawn to have a good Opinion of himſelf; as, out of Modeſty, ſubmitting his own Reaſon to the teſtimony of many Witneſſes.

Ambition in it ſelf is no Fault; but the moſt natural Commendation of the Soul, as Beautie is of the Bodie: It is in Men, as Beauty is in Women. For, as to be naturally exceeding handſome, is the greateſt Commendation of that Sex, and that for which they moſt deſire to be Commended; ſo that Ambition by which Men deſire Honour the natural way (which conſiſts in doing honourable and good Acts) is the root of the moſt perfect Commendation that a Morall Man is capable of.

Thoſe

Thoſe onely offend in their Ambition, who out of the earthlineſs of their minds dare not aſpire to that true Honor which is the eſtimation of a man, being as it were the Temple wherein Vertue is inſhrin'd; And therefore ſettle their minds onely upon attaining Titles and Power; which at the firſt were, or at leaſt ſhould be the Mark whereby to diſtinguiſh men according to the Rate of their Vertues and ſufficiencies; but are now onely Arguments of a Mans good Fortune, and effects of the Princes favour.

It is true that Power is a brave addition to a worthy Man; but a Fool, or a Knave that is powerful, hath (according to the degree of his Power) juſt that advantage of a vertuous prudent man, that *Adam*, before he fell, had of the Angels that ſtood; an Ability to do more ill.

As for Titles (which at firſt were the marks of Power, and the Rewards of Vertue) they are now (according to their name) but like the Titles of Books, which (for the moſt part) the more glorious things they promiſe, let a Man narrowly peruſe them over, the leſs ſubſtance he ſhall find in them. And the wooden *Lord* is like the *Logg* that *Jupiter* gave the Frogs to be their King; it makes a great noiſe; it prepares an expectation of great matters, but when they once perceived it unactive, and ſenleſly lying ſtill, the wiſer ſort of Frogs began to de-

ſpiſe it, and (in fine) every young Frogling preſumed to leap up and down upon it.

Some few there are, who (leaſt the ſpecies of our antient worthy Lords ſhould be loſt) do preſerve in themſelves the will and deſire, ſince they want the means, to do brave and worthy Acts. And therefore I ſay, let a Man by doing worthy Acts deſerve honour, and though he do not attain it, yet he is much a happier man than he that gets it without deſert. For ſuch a man is before hand with Reputation; and the world ſtill owes him that honour with his deſerts cry for, and it hath not paid; VVhereas that man that hath a great Reputation, without deſerving it, is behind-hand with the world; and his honour is but lent, not paid; And when the world comes to take accompt of its Applauſe, and finds his Title of Merit (by which he pretends to it) weak and broken, it will recall it's Approbation, and leave him by ſo much the more a notorious Bankrupt in his good Name, by how much the Eſtimation of his Wealth that way was the greater.

Of Fortitude.

FOr a Man to be compleatly happy there is required the Perfection of all Morall Virtues; And yet this is not enough

nough; For, Virtues do rather baniſh Misfortunes, and but ſhew us Joy, than eſtabliſh Felicity: VVhich is not onely an utter Alienation from all Affliction, but an abſolute Fulneſs of Joy. And ſince the Soul of Man is infinitely more excellent than any thing elſe it can meet withal in this VVorld, nothing upon Earth can ſatisfie it, but in the enjoying of the greateſt Abundance of all delights that the moſt nimble witted Man can frame to himſelf; For that his Soul will ſtill have a further Deſire, as unſatisfied with that it enjoyes. Therefore the Perfection of Happineſs conſiſts in the Love of God; which is onely able to fill up all the Corners of the Soul with moſt perfect Joy; and conſequently to fix all its deſires upon thoſe Celeſtial Joyes that ſhall never be taken from it. But this, as it cannot be obtained by Diſcourſe, but by unfeigned Prayer, and the Aſſiſtance and Illumination of Gods Grace; So is it not my purpoſe to prick at it. And for that part of Felicity which is attained to by moral Virtue, I find that every Virtue gives a Man Perfection in ſome kind, and a degree of Felicity too: *viz.*

Honeſty, gives a Man a good Report;
Juſtice, Eſtimation and Authority;
Prudence, Reſpect and Confidence;
Courteſie, and *Liberality*, Affection, and a kind of Dominion over other Men.

Temperance, Healthy.

Fortitude, a quiet Mind, not to be moved by any Adverſity, and a Confidence not to be Circumvented by any danger.

So that all other Virtues give a Man but an outward Happineſs, as receiving their Reward from others; onely *Temperance* doth pretend to make the Body a Stranger to Pain, both in taking from it the Occaſion of Diſeaſes, and making the outward Inconveniences of VVant, as Hunger and Cold, if not delightful, at leaſt ſuffareble.

Fr. Walſingham.

A

A Brief

DISCOURSE

Concerning the Power of the

PEERES

AND

COMMONS

OF

PARLIAMENT

In point of

JUDICATURE.

Written by Sir *Robert Cotton*, at the request of a Peer of this *REALM.*

LONDON:

Printed in the Year 1672.

A Brief

DISCOURSE

Concerning the

POWER

Of the

PEERS, &c.

SIR, To give you as short an accompt of your desire as I can, I must crave leave, to lay you, as a ground, the frame or first model of this State.

When, after the Period of the *Saxon* time *Harold* had lifted himself into the Royal Seat, the great Men, to whom but lately he was no more than equal either in fortune or power, disdaining this Act of Arrogancy, called in *William*, then Duke of *Normandy*, a Prince more active than any in these Western Parts, and renowned for many Victories he had fortunately atchieved against the *French*

King, then the most potent Monarch of *Europe*.

This Duke led along with him to this work of Glory, many of the younger Sons of the best Families of *Normandy*, *Picardy*, and *Flanders*, who as Undertakers, accompanied the Undertaking of this fortunate Man. The Usurper slain, and the Crown by War gained; To secure Certain to his Posterity what he had so suddenly gotten, he shared out his purchase, retaining in each County a portion to support the Dignity Soveraign, which was stiled *Demenia Regni*, now the antient Demeans; And assigning to others his Adventurers such portions as suited to their quality and expence, retaining to himself dependency of their personal service (except such Lands as in free Alms, were the portion of the Church) these were stiled *Barones Regis*, the Kings immediate Free-holders; for the word *Baro* imported then no more.

As the King to these, so these to their followers sub-divided part of their shares into Knights Fees; and their Tenants were called *Barones Comites*, or the like; for we find, as the Kings write in their Writs, *Baronibus suis & Francois & Anglois*; the Soveraigns Gifts, for the most part, extending to whole Counties or Hundreds, an Earl being Lord of the one, and a Baron of the inferiour Donations

to

to Lords of Townſhips or Mannors. As thus the Land, ſo was all courſe of Judicature divided; even from the meaneſt to the higheſt portion, each ſeveral had his Court of Law, preſerving ſtill the manner of our Anceſtors the *Saxons*, who *jura per pagos reddebant*; and theſe are ſtill termed Court Barons, or the Freeholders Court, twelve uſually in number, who with the *Thane* or chief Lord were Judges. The Hundred was next; where the *Hundredus* or *Aldermanus*, Lord of the Hundred, with the chief Lords of each Townſhip within their limits judged.

Gods People obſerved this form in the publique, *Centuriones & Decani judicabant plebem omni tempore.* The County or *generale placitum* was the next; This was, ſo to ſupply the defect, or remedy the Corruption of the Inferiour, *Ubi Curiæ Dominarum probantur defeciſſe, pertinent ad Vicecomitem Provinciarum.* The Judges here were *Comitos, Vicecomites, & Barones Comitatus qui liberas in eo terras habent.*

The laſt and ſupream, and proper to our queſtion, was *Generale Placitum apud London, Univerſalis Synodus,* in Charters of the Conqueror, *Capitalis Curia,* by Glanvile. *Magnum & Commune conſilium coram Rege & Magnatibus ſuis.* In the Rolls of *Hen.* the third, it is not ſtative, but ſummoned by Proclamation; *Edicitur generale placitum apud London,* ſaith

Lib. Ep. Glanvile.

ſaith the Book of *Abingdon*, whither *epiſcopi, Duces, Principes, Satrapæ, Rectores, & Cauſidici ex omni parte confluxerunt ad iſtam Curiam*, ſaith Glanville, Cauſes were referred *propter aliquam dubitationem quæ emergit in Conitatu, cum Comitatus neſcit dijudicare*. Thus did *Ethelweld* Biſhop of *Winton* transfer his Suit againſt *Leofrine* from the County *ad generale placitum*, in the time of King *Ethildred*: Queen *Edgin* againſt *Goda* from the County appealed to King *Ethelbred* at *London*, *Congregatis principibus & ſapientibus Angliæ*. A Suit between the Biſhops of *Winton* and *Durham*, in the time of Saint *Edward*, *Coram Epiſcopis & Principibus Regni in præſentia Regis, ventilata & finita*. In the 10. year of the Conqueror, *Epiſcopi, Comites, & Barones Regia poteſtate e diverſis Provinciis ad univerſalem Synodum pro cauſis audiendis & tractandis convocati*, ſaith the Book of *Weſtminſter*, and this continued all along in the ſucceeding Kings Reigns until towards the end of *Henry* the third.

Vit Sancti Etheldredi Epiſc.

As this great Court or Councel conſiſting of the King and Barons, ruled the great affairs of State, and controlled all inferiour Courts, ſo were there certain Officers, whoſe tranſcendent power ſeemed to be ſet to bound in the execution of Princes Wills; as the Steward, Conſtable, and Marſhal, fixed upon Families

Families in Fee for many Ages: They as Tribunes of the People, or *Ephori* amongſt the *Athenians*, grown by an unmannerly Carriage, fearful to Monarchy, fell at the Feet and mercy of the King, when the daring Earl of *Leiceſter* was ſlain at *Everſham*. This Chance, and the dear experience *Henry* the third himſelf had made at the Parliament at *Oxford* in the 40. year of his Reign, and the memory of the many ſtreights his Father was driven unto, eſpecially at *Runnymead* near *Stanes*, brought this King wiſely to begin what his Succeſſors fortunately finiſhed, in leſſening the ſtrength and power of his great Lords. And this was wrought by ſearching into the Regality they had uſurped over their peculiar Soveraigns (whereby they were (as the Book at St. *Albans* tearmeth them) *Quot Domini tot Tyranni*) and by weakening that hand of power which they carried in the Parliaments, by commanding the ſervice of many Knights, Citizens, and Burgeſſes to that great Councel. Now began the frequent ſending of Writs to the Commons, their aſſents not only uſed in Money, Charge, and making Laws (for before all Ordinances paſſed by the King and Peers) but their conſent in Judgements of all natures, whether Civil or Criminal. In proof whereof I will produce ſome few ſucceeding Preſidents out of Record.

When

Liber Sancti Albani fol. 207 Anno 44. H. 3.

When *Adomar* that proud Prelate of *Winchester*, the Kings half Brother, had grieved the State with his daring power, he was exiled by joynt sentence of the King, the Lords, and Commons; and this appeareth expressly by the Letter sent by Pope *Alexander* the fourth expostulating a revocation of him from Banishment, because he was a Churchman, and so not subject to Lay Censures. In this, the Answer is, *Si Dominus Rex & Regni majores hoc vellent*, meaning his revocation, *Communitas tamen ipsius ingressum in Angliam jam nullatenus sustineret.* The Peers subsign this Answer with their names, and *Petrus de Montford vice totius Communitatis*, as Speaker or Proctor of the Commons; For by this stile Sir *J. Tiptoft* Prolocutor affirmeth under his Arms the Deed of entaile of the Crown by King *Henry* 4. in the 8. year of his Reign, for all the Commons.

Chirtagrig. subsigill Ann. 8. H. 4. apud Rob. Cotton

Rot. Parl. anno 15 E. 2.

The Banishment of the two *Spencers* in 15. *E.* 2. *Prælati Comites & Barones & les autres Peeres de la terre & Commons de Roialme*, give Consent and Sentence to the Revocation and Reversement of the former Sentence; the Lords and Commons accord, and so it is expressed in the Roll.

Rot Parl. anno 16. E. 2.

Ro. Parl. anno 1. E. 3. n. 11.

In the first of *Edward* the third, when *Elizabeth* the Widdow of Sir *John de Burgo* Complained in Parliament, that *Hugh*

Hugh Spencer the younger, *Robert Baldock*, and *William Cliffe* his Instruments, had by dures forced her to make a writing to the King, whereby she was dispoiled of all her inheritance, Sentence was given for her in these words. *Pur ceo que avis est al Evesques Counts & Barones & autres Grandes & a tout Cominalte de la terre, que le dit escript est fait contre ley, & tout maner de raison si fuist le dit escript per agard del parliam. dampne elloques al livre a la dit Eliz.*

In the 4th. of *Edward* 3. it appears by a Letter to the Pope, that to the Sentence given against the Earl of *Kent*, the Commons were parties as well as the Lords and Peers; for, the King directed their proceedings in these words; *Comitibus, Magnatibus, Baronibus, & aliis de Communitate dicti Regni ad Parliamentum illud congregatis injunximus, ut super his discernerent & judicarent quod ratione & justitia conveniret, habere præ oculis, solum Deum qui cum concordi & unanimi sententia tanquam rerum criminis læsæ majestatis morti abjudicarent ejus sententia*, &c.

When in the 50th. of *E.* 3. the Lords had pronounced the Sentence against *Richard Lyons*. otherwise than the Commons agreed; they appealed to the King, and had redress, and the Sentence entred to their desires. *Parl. Anno* 50 *Ed:* 3.

When in the first year of *R.* 2. *William* *Parl.* 1. R. 2. n. 38, 39.

am Weſton, and *John Jennings* were arraigned in Parliament, for ſurrendring certain Forts of the *Kings*, the Commons were parties to the Sentence againſt them given, as appeareth by a Memorandum annexed to that Record.

Parl. 1. H. 4. In 1 *H.* 4. although the Commons refer by proteſtation, the pronouncing the ſentence of depoſition againſt *King Richard* the *Second*, unto the Lords, yet are they equally intereſſed in it, as appeareth by the *Record*, for there are made Proctors or Commiſſioners for the whole Parliament, one Biſhop, one Earl, one Abbot, one Barronet, and Two Knights, *Gray* and *Erpingham*, for the Commons; and to infer, that becauſe the Lords pronounced the ſentence the point of Judgment ſhould be only theirs, were as abſurd, as to conclude that no authority was left in any other Commiſſioner of *Oyer* and *Terminer* than in the perſon of that man ſolely that ſpeaketh the Sentence.

Rot. Parl. An. 2. H. 5. In the Second of *Hen.* the *5th* the Petitions of the Commons importeth no leſs than a *Right* they had to act and aſſent to all things in Parliament; and ſo it is Anſwered by the King. And had not the Journal *Roll* of the Higher Houſe been left to the ſole entry of the Clerk of the upper houſe, who, either out of neglect to obſerve due form, or out of purpoſe to obſcure the Commons right, and

and to flatter the power of thoſe he immediately ſerved, there would have bin frequent examples of all times to clear this doubt, and to preſerve a juſt Intereſt to the Commonwealth. And how conveniently it ſuits with Monarchy to maintain this form, leſt others of that well-framed body, knit under one head, ſhould ſwell too great and monſtrous, it may be eaſily thought. For, Monarchy again may ſooner groan under the weight of an Ariſtocracy, as it once did, then under a Democracy, which it never yet either felt or feared.

R: C: B.

FINIS.